DOCUMENT RESUME

ED 141 926 EA 009 738

AUTHOR Thomas, Mason P., Jr.; Hogue, L. Lynn
TITLE Kids and Cops. Law Enforecement Services for Children in North Carolina. Interim Report.
INSTITUTION North Carolina Univ., Chapel Hill. Institute of Government.
PUB DATE 74
NOTE 128p.; Statutory material updated 1977; Some pages may not reproduce clearly due to light and broken print; Best copy available

EDRS PRICE MF-$0.83 Plus Postage. HC Not Available from EDRS.
DESCRIPTORS Child Abuse; *Children; Civil Rights; Corrective Institutions; Court Litigation; Delinquency; *Juvenile Courts; *Law Enforcement; *Laws; Neglected Children; *Police; *State Legislation
IDENTIFIERS *North Carolina

ABSTRACT

This book is designed to meet the practical needs of law enforcement officers working with children in North Carolina. Chapters on the law and children's rights, changes in the law enforcement officer's role, legal procedures applicable to juveniles, the use of juvenile detention resources, and child abuse and neglect contain historical background information, as well as analyze relevant statute and court law. The authors examine the rationale behind the laws pertaining to delinquent, undisciplined, dependent, and neglected children. They emphasize that present-day law is intended to reform delinquent and undisciplined children and to protect those whose families fail to provide protection and safety. The book also includes the text of selected general statutes relating to children in North Carolina. (Author/DS)

****
* Documents acquired by ERIC include many informal unpublished *
* materials not available from other sources. ERIC makes every effort *
* to obtain the best copy available. Nevertheless, items of marginal *
* reproducibility are often encountered and this affects the quality *
* of the microfiche and hardcopy reproductions ERIC makes available *
* via the ERIC Document Reproduction Service (EDRS). EDRS is not *
* responsible for the quality of the original document. Reproductions *
* supplied by EDRS are the best that can be made from the original. *
****

ED141926

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY.

PERMISSION TO REPRODUCE THIS COPYRIGHTED MATERIAL BY MICROFICHE ONLY HAS BEEN GRANTED BY
Inst. of Gov't
UNC Chapel Hill
TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE NATIONAL INSTITUTE OF EDUCATION. FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER.

INSTITUTE OF GOVERNMENT
The University of North Carolina at Chapel Hill

Henry W. Lewis, Director

Faculty

Rebecca S. Ballentine
Joan G. Brannon
William A. Campbell
Stevens H. Clarke
Michael Crowell
Bonnie E. Davis
Anne M. Dellinger
James C. Drennan
Richard D. Ducker
Robert L. Farb
Joseph S. Ferrell
Douglas R. Gill
Philip P. Green, Jr.
Donald B. Hayman
Milton S. Heath, Jr.
C. E. Hinsdale
Dorothy J. Kiester
David M. Lawrence
C. Donald Liner
Ben F. Loeb, Jr.
Ronald Lynch
Richard R. McMahon
Elmer R. Oettinger
Robert E. Phay
M. Patrice Solberg
Mason P. Thomas, Jr.
H. Rutherford Turnbull, III
A. John Vogt
L. Poindexter Watts
Warren J. Wicker

BEST COPY AVAILABLE

KIDS AND COPS

Law Enforcement Services for Children in North Carolina

MASON P. THOMAS, Jr.

L. LYNN HOGUE

INSTITUTE OF GOVERNMENT
University of North Carolina at Chapel Hill / 1974

Statutory Material Updated 1977

Copyright 1974
Institute of Government
University of North Carolina at Chapel Hill
Made in the United States of America

Preface

This book is designed to meet the practical needs of a law enforcement officer working with children in North Carolina. It has been financed by a juvenile delinquency grant from the Office of Youth Development and Delinquency Prevention in the Department of Health, Education, and Welfare administered by the Division of Law and Order, North Carolina Department of Natural and Economic Resources.

A number of people have contributed to the book at various stages of its development, and we are indebted to all of them. Bill Maywhort and Katherine Yost were among the research assistants who helped. An advisory committee of law enforcement officers reviewed the first draft and made a number of helpful suggestions. These officers were:

Captain Sonnie B. Simpson, Chairman
Youth Division, Greensboro Police Department

Mrs. Dorothy Kimel, Juvenile Investigator
Youth Division, Greensboro Police Department

Sgt. Jerry Mitcham
Youth Bureau, Statesville Police Department

Mr. John Noble, Juvenile Officer
Juvenile Bureau, Rowan County Sheriff's Department

Mrs. Dana Tingen, Assistant Youth Officer
Youth Bureau, Burlington Police Department

Lt. L.T. Williams
Youth Unit, Special Services, Raleigh Police Department

Dean A. Kenneth Pye of the Duke University Law School also reviewed the manuscript. His valuable comments have been followed when possible.

We sincerely thank those who have contributed their talent, knowledge, and time. Any errors or omissions are our responsibility. We hope that the book will be useful to law enforcement officers and helpful to children.

Mason P. Thomas, Jr.

L. Lynn Hogue

Chapel Hill
Fall, 1974

Contents

1. A New Role for the Law Enforcement Officer 1
2. The Law and Children's Rights 15
3. Law Enforcement Procedures Applicable to Juveniles 22
4. The Use of Juvenile Detention Resources 39
5. Child Abuse and Neglect 54

APPENDIXES

I. Selected General Statutes Relating to Children in North Carolina
- Juvenile Jurisdiction of the District Court 65
- Juvenile Probation and Aftercare 74-81
- Juvenile Detention 81, 104-106
- Interstate Compact on the Placement of Children 82-85
- Interstate Compact on Juveniles 86-94
- Child Abuse Reporting Law 94-97
- Division of Youth Development, Department of Correction 97-108
- Criminal Statutes Relating to Children 108-111

II. Diversion of Juvenile Offenders: An Overview 113

III. Juvenile Petition Form 121

IV. Additional Readings 122

1

A New Role for the Law Enforcement Officer

THE TRADITIONAL ROLE of the law enforcement officer is to protect the people and property of his community and to prevent crime, a job accomplished by apprehending a criminal, prosecuting him, and convicting him. The officer's training is directed toward these goals. He is taught techniques of investigation, apprehension of a suspect, gathering evidence to establish guilt beyond a reasonable doubt, presenting evidence in court, and so on. The officer who is able to apprehend a criminal and see him tried and convicted takes some satisfaction in having done his job well.

The officer's role with the child offenders is different in purpose, philosophy, and procedure. The juvenile justice system is separate from the adult criminal justice system, and working within it requires the officer both to change his traditional ways of doing things and to understand and conform to the objectives that the juvenile system seeks to achieve. The purpose of this book is to help the law enforcement officer operate effectively in the juvenile justice system.

HISTORICALLY, UNTIL THE BEGINNING of this century, children charged with criminal offenses were treated much as adults were.[1] The law that applied to them came from the English common law, from which North Carolina law originated. Children under seven were considered too young to have a criminal intent (sometimes referred to as *mens rea*) when they acted. A child between seven and fourteen was also presumed to be too young for criminal intent unless it could be demonstrated that he committed a criminal act with knowledge of what he was doing. From the age of fourteen, a child was fully responsible as an adult. Thus from age seven, children were subject to possible arrest,

grand jury indictment, public trial in criminal court before a judge and jury, and punishment under the same standards and procedures as applied to adults.

About 1900, however, a change of attitude toward child offenders began throughout the nation as a whole. The new attitude was that society had more to gain by rehabilitating a child offender than by simply punishing him; the child himself was more important than his offense. On this premise, the first juvenile court was established in Chicago. It was dedicated to the proposition that child offenders, if they were to be rehabilitated, must be kept separated from adult offenders in jails, courts, and prisons.

The court itself was informal and was not adversary in form – that is, without prosecution and defense. The objective of the court was to explore the needs of the child and to arrive at the appropriate treatment, rehabilitation, protection, or other action for the child. The basic assumption of the juvenile court philosophy, then as now, was that there is more hope for successful intervention and rehabilitation with the child offender than with adults. The child is not held to the same standard of responsibility as an adult because he *is* a child and because the opportunity to change attitudes and behavior may be greater during childhood.

The authority of the juvenile court for many years extended to children under sixteen who fitted into certain specified categories. The first of these was "delinquent." It included not only children who had committed crimes, but also those involved in behavior that was not criminal but was prohibited for children as a group. Their acts constituted the so-called "status offenses"; these are acts that would not have been crimes if committed by adults – truancy, for example. By interpretation and usage, those who were "truant," "unruly," "wayward," "misdirected," or "disobedient to parents or beyond their control" fell under the broad umbrella of the "delinquent" category. Also under the jurisdiction of the juvenile court came children who needed protection because of the behavior of someone else – usually a parent. These were the "neglected" or "dependent" children.

The operation of the juvenile court was based upon the concept of *parens patriae* – that is, the state has the position of substitute parent to children living within the state and therefore has the duty to intervene in behalf of those children whose parents are considered failures. As a substitute parent of such children, the court made the arrangements that it considered appropriate for a child who came before it without regard to whether the child was being denied rights that would extend to an adult offender who found himself before a court of the regular justice system. In recent years, in a new awareness of the personal liberties of all citizens, this paternalistic attitude of the juvenile court has been challenged, and more will be said about that later.

In North Carolina, too, the emphasis was upon the needs of the child rather than upon his offense. The juvenile court law enacted in 1919 stressed protection – the welfare of the child, based upon the premise that each child under the jurisdiction of the juvenile court, whatever the category of jurisdiction, was a ward of the state. The law therefore authorized several unique practices and procedures designed to foster protection, treatment, and rehabilitation. For example, it provided for a semicivil process for bringing a child into juvenile court based upon a juvenile court petition and summons. It expanded the right of the state to take custody of children. It authorized private, informal court hearings and gave the juvenile court judge discretion over matters of procedure. It required the judge, when deciding on the disposition of the case, to consider whether the child was "in need of the care, protection, or discipline of the State."[2] And it established a juvenile probation system that was staffed primarily by the county departments of public welfare.

Unfortunately, the juvenile court law provided no guidelines for police authority over children. It said only that it is "the duty of every State, county, or municipal official or department to render such assistance and cooperation within his or its jurisdiction or power as shall further the object of this act." As a result, many issues remained cloudy and complex: What was the appropriate role of a law enforcement officer with children under sixteen? When could a police officer take a child into custody? Since a fourteen-year-old could be treated as an adult in certain situations, should an officer seek a juvenile petition or a criminal warrant to bring him into the court system? What rights of children and parents should be protected, and at what stage did these rights become applicable? Widely different points of view developed in those police departments that established special juvenile units. Was the work of those units law enforcement and apprehension? Crime and delinquency prevention? Social work? Or what?

The provisions of the 1919 legislation that established the North Carolina juvenile court created essentially a court that resembled a social agency with judicial powers. This was an approach that seemed best in terms of serving the goals of protection, treatment, and rehabilitation. With time, however, this concept came under increasing attack. Law enforcement officers sometimes felt that their role in the system had been diminished and that their opinions were discounted. They often viewed the juvenile court as being too socially oriented and considered it largely ineffective – a "do-gooder" court that let juvenile offenders off too lightly. This hostility carried over toward the county welfare departments that provided juvenile probation services, and here, too, the split between the social and legal points of view was one cause of the resentment. Differences in approaches and inadequate communication fostered professional conflict between law enforcement and other parts of the juvenile justice system.

But dissatisfaction with the system came from other sources, also. Frequently the quality of juvenile justice depended upon geography, for judges tended to operate informally under their own personal philosophies and procedures. Also, juvenile institutions – supposedly resources for treating and rehabilitating youthful offenders – were criticized as being "schools of crime." At the same time, the United States Supreme Court began to look seriously at juvenile justice. The landmark case of **In re Gault**[3] established that children who are alleged to be delinquent and might lose their freedom by commitment to a state institution have certain constitutional rights: (1) the right to adequate written notice of the charges, (2) the right to counsel, (3) the privilege against self-incrimination, and (4) the right to confront and cross-examine witnesses. This decision changed the nature of the fact-finding stage of juvenile system by incorporating procedural due process and the adversary process. The presence of lawyers in juvenile hearings became both appropriate and necessary as the right to counsel and concepts of due process were introduced into the proceedings.

Also, the implications of **Gault** carried over into the field of law enforcement. Police officers now had the additional duty of assuring adequate written notice of the charges through proper preparation of a juvenile petition. Presumably police would be expected to protect children's rights with respect to notice of the right to counsel and the privilege against self-incrimination, in allowing a child to waive his rights, and in interrogation procedures.

In 1969 North Carolina's juvenile court law was rewritten to assure the constitutional rights of children that were stipulated by the **Gault** decision and to incorporate the juvenile jurisdiction into the statewide district court system. The 1969 juvenile legislation created a new "undisciplined child" category of juvenile jurisdiction for the district court – both to avoid placing the label "delinquent" upon children in trouble who have not committed a criminal offense and to encourage the use of community resources in dealing with these children rather than placing them in institutions.[4]

In addition, the new law clarified some of the procedures that law enforcement officers and the courts must use in handling juvenile offenders. But still, no firm guidelines have been provided for the police in working with these children, and recent court decisions that emphasize the rights of children leave the law enforcement officer's role unclear and uncertain. Decisions about proper procedure are left to local departmental policies or to the individual officer's own judgment. As a result, law enforcement practices in regard to children vary widely from place to place in North Carolina.

To the degree that the law does offer guidance to the law enforcement officer, however, it can be summarized from the statutes and from court decisions as follows:[5]

SUMMARY OF JUVENILE LAW

Constitutional Authority. The North Carolina General Assembly has the constitutional authority under its police power to establish a separate system of juvenile justice for children less than sixteen years of age and to provide for a separate juvenile jurisdiction within the exclusive and original jurisdiction of the district court.[6]

Jurisdiction Based on Age. The legal effect of the 1919 juvenile court law was to increase the age of criminal responsibility from age seven, which had been the applicable age at common law, to age fourteen. A child younger than fourteen is within the exclusive juvenile jurisdiction of the district court regardless of the seriousness of the offense. A child above that age who is charged with a felony offense may be bound over to superior court for trial as an adult after a preliminary hearing in district court based on a juvenile petition and a finding of probable cause.

Separate Juvenile Proceeding. A juvenile proceeding is not properly either a civil or a criminal case; it is an adjudication of the child's status within the juvenile jurisdiction of the district court. It should be called a juvenile case. Since a juvenile hearing involving delinquency is not a criminal trial, there is no constitutional right to indictment by grand jury, to trial by jury, or to a public trial.

Categories of Juvenile Jurisdiction. Juvenile jurisdiction is based on the type of situation and age. The juvenile jurisdiction of the district court is divided into four basic categories – delinquent, dependent, neglected, and undisciplined. For the first three categories, juvenile jurisdiction applies to children under age sixteen; for the last category – undisciplined – jurisdiction extends to eighteen. (1) Delinquent children are those under sixteen years of age who commit offenses that would be crimes if committed by adults or who violate juvenile probation. (2) A dependent child is one under sixteen who has no parents or whose parents are unable to care for him. (3) A neglected child is one under sixteen who does not receive proper care from his parents, or has been abandoned, or needs medical or remedial care, or lives in "an environment injurious to his welfare," or has been placed for adoption in violation of law. (4) An undisciplined child is one under eighteen who commits a status offense -- that is, an offense that would not be a crime if committed by an adult, including truancy, running away from home, being beyond parental control, or being regularly in places unlawful for children to be.

The juvenile jurisdiction of the district court also includes children who come within the Interstate Compact on Juveniles – a statutory

procedure among states (administered in North Carolina through the Department of Human Resources) for returning runaways and supervising juvenile probationers or parolees (children on conditional release or after-care supervision from a juvenile training school).[7]

Purpose of Juvenile Justice System. The purpose of the juvenile jurisdiction of the district court is best summarized by the applicable statute:

> The purpose of this Article is to provide procedures and resources for children within the juvenile jurisdiction of the district court which are different in purpose and philosophy from the procedures applicable to criminal cases involving adults. These procedures are intended to provide a simple judicial process to provide such protection, treatment, rehabilitation or correction as may be appropriate in relation to the needs of each child subject to juvenile jurisdiction and the best interest of the State. The intent of this Article is to assure that, where possible, the court will arrange for the available community resources to be utilized to strengthen the child's family relationships in order to avoid removal of the child from his own home or community. Therefore, this Article should be interpreted as remedial in its purposes to the end that any child subject to the procedures applicable to the children in the district court will be benefited through the exercise of the court's juvenile jurisdiction.[8]

Petition Requirement. A juvenile case concerning a child who falls under the applicable age limit and is alleged to be delinquent, undisciplined, dependent, or neglected may be initiated by a law enforcement officer or anyone who knows or has information that the child is within one of the categories of juvenile jurisdiction. A case is initiated when a juvenile petition is signed. The petition is filed with the clerk of superior court. For after-hour emergencies when the office of the clerk of superior court is closed, a magistrate or other court officials may be authorized by the chief district judge to issue a juvenile petition when requested to do so by certain officials specified in the statute; the specified officials include a court counselor, a staff member of a county department of social services, or a law enforcement officer.[9]

Intake; Complaint Procedure. The chief court counselor in each of the state's thirty judicial districts has discretionary authority to establish an intake procedure applicable to the district to divert selected juvenile offenders from the juvenile justice system[10] If intake services are established, they must be organized as specified by the statute under

the supervision of the Administrator for Juvenile Services in the Administrative Office of the Courts. Intake is applicable only to children alleged to be within the juvenile jurisdiction of the district court as undisciplined or delinquent. Intake is not authorized for children alleged to be dependent or neglected.

The intake plan establishes a juvenile complaint procedure that will determine whether a juvenile petition will be signed in a specific situation involving a child who may be delinquent or undisciplined. The procedure is as follows: Complaints about juvenile violations should be made to the court counselor staff designated by the chief court counselor to be responsible for intake services. This intake staff must conduct "a preliminary inquiry to determine whether it is in the best interest of the child or the State that a juvenile petition be filed." The inquiry process must be completed within fifteen days. The purpose is "to adjust the case so that filing a petition will not be necessary."

The intake staff is authorized to determine whether a juvenile petition should be filed. This authority seems to limit the right of a citizen or law enforcement officer to sign a petition to cases approved by the intake counselor unless the judgment of the staff is overruled by the judge. If the intake staff decides that a juvenile petition should be filed, the staff is to notify the complainant and help him file a juvenile petition with the clerk of superior court. If the staff decides that a petition should not be filed, it "shall notify the complainant of this decision and of the complainant's right to have such decision reviewed by the judge of the court. Such intake personnel may refer the case to an appropriate public or private agency with notice to the complainant after which the intake file may be closed, subject to judicial review."

Requirements for Petition. The statute contains specific requirements about what must be included in a juvenile petition: "The petition shall contain the name, age and address of the child, the name and last known address of his parents or guardian or custodian, and shall allege the facts which invoke the juvenile jurisdiction of the court."[11]

The requirement that the juvenile petition include the facts that bring the child within the juvenile jurisdiction of the district court is particularly important for law enforcement officers. Recent court decisions interpret the federal Constitution to guarantee due process and fairness in juvenile cases. Specifically, the **Gault** decision requires that in delinquency cases in which a child may lose his freedom by commitment to an institution if adjudicated delinquent, he and his family must be notified in writing of the specific charge or factual allegations to be considered at the juvenile hearing. Thus, when a law enforcement officer signs any juvenile petition, he should give the age of the child and both facts and dates. In delinquency cases, he should also include the specific section of the criminal code that the child is alleged to have

violated. These procedures are discussed in detail in *Rules of Procedure Applicable to Children in the District Court*, published by the Administrative Office of the Courts, Raleigh.

Felony Procedures. When a child of fourteen or fifteen is believed to have committed a felony, the law enforcement officer initiates the case by signing a juvenile petition as described above. The district judge may hold a preliminary hearing on the juvenile petition to determine probable cause after the petition and summons have been served on the child and his family. The statute provides: "Such hearing shall provide due process of law and fair treatment to the child, including the right to counsel, privately retained or at the State's expense if indigent."[12] If probable cause is established, the judge has discretion to hear the case in district court as a juvenile case or transfer the case to the superior court for trial of the child as an adult except in capital cases. In capital cases, the judge must transfer the case to superior court if he finds probable cause. When a juvenile is transferred to superior court for trial as an adult, the district judge has discretion to order that the child be detained in a separate juvenile detention facility or separate section of a local jail pending the trial. If such a transfer is made, the district attorney must secure an indictment based on the juvenile petition and finding of probable cause by the district court judge.

Notice of Rights to Children. While the appellate cases are not clear in requiring that law enforcement officers give **Miranda** warnings to children, it is good practice for law enforcement officers who are investigating or interrogating a child suspect to notify him of his rights in the presence of his parents, his attorney, or a parental substitute. These rights include verbal (and later written) notice of the offense being investigated, notice of the right to counsel, and notice of the child's privilege against self-incrimination or right to remain silent. The notice should be given in terms that the child and his family can understand, and it should not be given in such a way that it coerces or intimidates the child and/or his family to waive these rights.[13]

Waiver by a Minor. A child may make a valid waiver of his rights even though he is a minor. North Carolina follows the "totality of circumstances" rule to determine whether a minor's out-of-court, in-custody confession is admissible. If the validity of a child's confession to a law enforcement officer is challenged in court, the judge will consider the circumstances surrounding the confession to determine whether it is admissible in court. The factors to be considered in making this decision include the child's age, intelligence, education, and experience and whether he was in custody. In general, to be admissible in court, a confession must be voluntary and based on an understanding of the situation.[14]

Notice. Notice in a juvenile case is completed by serving a summons and a copy of the juvenile petition on the child and his parents at least five days before the date of the juvenile hearing. The statute states: "Service of the summons and petition shall be made personally by leaving a copy of the summons and petition with the person summoned."[15] This seems to require that the law enforcement officer who serves a summons and petition should personally serve both the parents and the child with separate copies of the petition and summons. The statute does provide for alternatives to such personal service and for waiver of the five-day advance notice in specified circumstances.

Detention Discouraged. When an adult is arrested, the customary procedure is to take him to jail, where he is allowed to post bond until trial or is released on his own recognizance. If he cannot post the required bond, he may be confined until the time of trial. The procedures that are followed by a law enforcement officer who deals with a child offender within the juvenile jurisdiction of the district court are different in several important respects. Children are never routinely detained before the juvenile hearing. The decision to detain is a judicial function made by a judge based solely on a juvenile petition showing that the child meets the statutory criteria required for detention.[16]

The place of pre-hearing confinement in the juvenile justice system is called a juvenile detention home. The general policy of the law is that juveniles shall not be held in a local jail, and jail detention of children is permissible only when specified circumstances exist and no juvenile detention home is available. Although eight of the 100 North Carolina counties have a juvenile detention home, the pre-hearing detention of children younger than sixteen in a jail is legally permissible in the remaining 92 counties only if the county has a jail with the required separate facilities for juveniles.

Children in only two categories of juvenile jurisdiction qualify for pre-hearing detention – (1) undisciplined and (2) delinquent. The statute authorizes detention "where the court finds it necessary that such child be detained in secure custody for the protection of the community or in the best interest of the child before or after a hearing on the merits of the case. . . ."[17] A child may not be detained before the hearing for more than five calendar days unless there is a detention hearing to determine the need for continued detention under the juvenile procedures.

Beginning July 1, 1975, it will be unlawful to detain a child within the juvenile jurisdiction of the district court as delinquent or undisciplined in a local jail except in a holdover facility pending placement in a regional juvenile detention home. Legislation adopted in 1974 requires the Secretary of Human Resources to develop new standards applicable to juvenile detention homes by July 1, 1977, and the Division of Youth Development, Department of Correction, to develop a statewide plan for regional juvenile detention by January 1, 1979.[18]

Presentation of a Juvenile Case. When a law enforcement officer is the petitioner in a juvenile delinquency case, as he often is, he should plan to attend the juvenile hearing. He should come prepared to give facts about the case based upon his knowledge and investigation. Since the child has the rights to counsel, to face his accusers, and to have his counsel cross-examine any witnesses against the child, the officer should have the facts ready and have with him any official records upon which he may be cross-examined.

Child's Needs Come First. The law requires a district judge exercising juvenile jurisdiction to give a higher priority to the needs of the child offender than to the offense that brings him before the court. Even though the court finds that the child committed the offense, the judge must dismiss the petition if the court finds that the child does not need either protection or discipline, the services available through the court. The statute reads: "If the court finds that the conditions alleged do not exist, or that the child is not in need of the care, protection or discipline of the State, the petition shall be dismissed."[19]

Nature of the Juvenile Hearing. Juvenile hearings are divided into two parts – adjudication and disposition. The law enforcement officer who initiates a juvenile case will play a significant part in the adjudication part of the hearing, during which the court is concerned about the facts of the case and whether it has jurisdiction. The disposition part of the hearing may be more informal. The statute offers the judge a number of dispositional alternatives for a child found within juvenile-jurisdiction as delinquent or undisciplined. They include allowing the family an opportunity to plan better for the child, juvenile probation, excusing the child from school attendance under certain circumstances, court supervision of the child in his own home, placing him with a relative or a child-placement agency, and others.[20]

Official Policy of North Carolina. The statute contains a state policy applicable to children who are found to be delinquent or undisciplined. Both the judge and law enforcement officers must keep it in mind:

> The initial approach should involve working with the child in his own home so that the appropriate primary resources (such as the parents, school and other community services) may be involved in child care, supervision and treatment according to the needs of the child. Thus, the court should arrange for appropriate community-level services to be provided to the child and/or his family in order to strengthen his own home, such as juvenile probation services, mental health services, educational services, social services and others as may be appropriate.[21]

NORTH CAROLINA'S JUVENILE JUSTICE SYSTEM does have some serious shortcomings. The report of the Penal System Study Committee of the North Carolina Bar Association in 1972 identified a number of problems in juvenile corrections in the state, including the fact that North Carolina was committing more children per capita to training schools than any other state; that 50 per cent of the children in training schools at that time should not be there; and that the state's training schools lacked the staff, resources, and facilities to do an adequate job.

The law enforcement officer should do his part toward achieving the juvenile justice system's goals of protection and rehabilitation. He is usually the first person that the child offender encounters who represents the authority of the juvenile system. How the officer handles such a child is critical in three ways: (1) In most encounters no arrest will be made. The officer's behavior will shape the child's image of the justice system. (2) It is he who will decide whether the child enters the system by juvenile petition or is referred to some other resource for help — that is, whether he is diverted from the system. This decision may be based on departmental policy, but it may also be based on the officer's own judgment. (3) Also, if a child is referred by petition to court, the officer's method of investigation and evaluation may have an important effect upon the child's attitude and willingness to relate to the other parts of the juvenile justice system that may follow, including the court, probation, and juvenile institutions.

A police officer in North Carolina must be a man of many talents. Society expects him to fulfill the traditional enforcement and protection role with adult offenders, and also expects him to be a skillful interviewer, counselor, and decision-maker with children, fully aware of his responsibility to protect their constitutional rights. Moreover, he must know both his own limitations as an individual and how to make appropriate referrals of children or parents to those agencies within the community that are professionally staffed to handle the various financial, emotional, medical, and social problems that he encounters in working with children and their families. In short, recent changes in law and new knowledge about delinquency require law enforcement officers to assume new roles and services in an already difficult job.

North Carolina law enforcement agencies have met their responsibility to provide services for children in a number of ways. Most of them use line officers to handle juvenile offenders. County sheriffs' departments and smaller municipal law enforcement agencies tend to do this because of the small juvenile case loads in rural areas and the lack of manpower and funding to provide specialized services for youth. Some law enforcement administrators believe that the use of line-level personnel is the most practical approach to working with children since it is the generalist officer who normally makes the initial contact with a child in trouble.

Usually the departments with some degree of specialization are found in the urban areas of the state, where larger numbers of juvenile offenders and more manpower make it feasible to provide specialized law enforcement services to juveniles. The actual type of specialization (with respect to intradepartmental organization) and the specific duties of the juvenile officers vary according to the size, geographic location, administrative attitudes, and public expectations of the community. In some communities, police departments provide "semi-specialists" – officers who have other duties in the line area but have been designated to handle juvenile cases as they arise. In the larger cities, cases are normally routed to separate juvenile specialist units that devote their entire time to investigating and disposing of juvenile cases.

The typical line officer in North Carolina often knows too little of the special procedures that apply to juvenile cases or of child and adolescent psychology. Occasionally, the reason is that his particular law enforcement agency gives low priority to juvenile police services. But more often the deficiency results from "role confusion," which may exist in any department regardless of whether it has a juvenile specialist. In agencies without a juvenile specialist, the line officer must handle both adult and juvenile offenders. Most of his training and time is devoted to adults. Since he perceives his primary role to be enforcing the laws and protecting the community, he tends to apply the more traditional approaches to his work with children. He may confuse the philosophies and procedures and even the pieces of paper (for example, warrants and petitions) involved in the adult and juvenile justice systems; the line officer simply may not recognize his special role with children. As a result, ideas of enforcement and apprehension override considerations of protection, treatment, and rehabilitation. The offense may become more important than the child.

In those agencies that have a separate juvenile division, a second type of "role confusion" may exist. Line officers sometimes rely too heavily on the juvenile specialists to implement the practices and procedures applicable to children within juvenile jurisdiction. Normally, this reliance occurs because the individual line officer fails to recognize that he also has an important responsibility in juvenile cases. If a line officer has the initial contact with a child offender, he must be clear on his role, know how to refer the case to the specialist, and have the same general objectives as the specialist. The generalist line officer and the juvenile specialist must work effectively together; juvenile law enforcement programs cannot be successful without coordination between a juvenile officer and the line officer.

Juvenile specialists are sometimes labeled by their peers as "lollipop cops," "the diaper squad," or the "kiddie patrol." Normally, such remarks are good-natured, but occasionally they indicate that the line officer does not appreciate the importance of the juvenile specialist's work. In some departments, service in a specialized youth program is

Table 1-I
Specialized Juvenile Law Enforcement Units
North Carolina Law Enforcement Agencies – February, 1974

Municipal Police Departments	Name of Unit	When Organized
Albemarle	Juvenile Bureau	1970
Asheville	Youth Bureau and Community Services	1949
Burlington	Burlington Youth Bureau	1966
Charlotte	Youth Bureau (Since March 1974 has used team policing)	1951
Clinton	Youth Services Bureau	1973
Denton	Juvenile Officer	1973
Durham	Youth Division	1971
Eden	Juvenile Division	1968
Fayetteville	Youth Services Bureau	1973
Gastonia	Youth Bureau	1973
Goldsboro	Juvenile Division	1968
Greensboro	Youth Division	1954
Hendersonville	Juvenile Officer	1964
Kinston	Juvenile Division	1965
High Point	Youth Bureau	1970
Lexington	Youth Division	1973
Mebane	Juvenile Officer	
Raleigh	Juvenile Squad	1972
Reidsville	Juvenile Officer	1973
Roanoke Rapids	Juvenile Division	1973
Rocky Mount	Community Relations Division	1969
Salisbury	Juvenile Bureau	1970
Scotland Neck	Juvenile Officer	1973
Siler City	Juvenile Division	1973
Statesville	Youth Bureau	1971
Tarboro	Community Service Unit	1970
Thomasville	Juvenile Division	1973
Winston-Salem	Juvenile Division	1964

County Sheriffs' Departments	Name of Unit	When Organized	Where Located
Buncombe	Crime Prevention Youth Squad	1973	Asheville
Cabarrus	Youth Domestic Bureau	1971	Concord
Cumberland	Juvenile Division	1963	Fayetteville
Forsyth	Juvenile Division	1972	Winston-Salem
Guilford	Juvenile Division	1970	Greensboro
Lenoir	Juvenile Officer	1972	Kinston
Rockingham	Juvenile Officer	1973	Wentworth
Union	Community Relations Youth Bureau	1972	Monroe
Wilkes	Juvenile Officer	1972	Wilkesboro

viewed as a dead-end or a handicap to advancement with the department. In other departments, those who have demonstrated exceptional ability in working with children have been promoted, sometimes out of the youth division to other departmental positions. As law enforcement leaders become better acquainted with the juvenile justice system, they will no doubt become more aware of the importance of police work with children and the special skills required to succeed in this area of law enforcement.

Table 1-I shows the North Carolina enforcement agencies that had specialized juvenile divisions as of March, 1974.

Chapter 1

Notes

1. For a more fully documented discussion of the history of the juvenile justice system with particular reference to North Carolina, see Mason P. Thomas, Jr., **Juvenile Corrections and Juvenile Jurisdiction** (Chapel Hill: Institute of Government, 1972).

2. *See* former **N.C. Gen. Stat.** § 110-29 (repl. vol. 1965).

3. 387 U.S. 1 (1967).

4. N.C. Session Laws 1969, c. 911, codified as **N.C. Gen. Stat.** § § 7A-277 to -289.

5. This summary is by no means exhaustive, nor is the documentation of it. Law enforcement officers and others seeking information on North Carolina law are referred to the ensuing chapters and their references.

6. State v. Burnett, 179 N.C. 735 (1920); **In re** Burrus, 275 N.C. 517 (1969).

7. **N.C. Gen. Stat.** § 7A-278.

8. **N.C. Gen. Stat.** § 7A-277.

9. **N.C. Gen. Stat.** § 7A-281.

10. *Id.*

11. *Id.*

12. **N.C. Gen. Stat.** § 7A-280.

13. *See* **N.C. Gen. Stat.** § § 7A-283 and -285.

14. State v. Rush, 13 N.C. App. 539, 186 S.E.2d 595 (1972).

15. **N.C. Gen. Stat.** § 7A-283.

16. **N.C. Gen. Stat.** § 7A-286.

17. *Id.*

18. *See* **N.C. Gen. Stat.** § 110-24; **N.C. Gen. Stat.** § 134-35; **N.C. Gen. Stat.** § 153A-221.1.

19. **N.C. Gen. Stat.** § 7A-285.

20. **N.C. Gen. Stat.** § 7A-286.

21. **N.C. Gen. Stat.** § 7A-286 (4).

2

The Law and Children's Rights

THE LAW IS BASICALLY A SYSTEM OF RULES governing human conduct. Since the United States Constitution was ratified in 1789, that document has provided the basic structure for the operation of law and government in this country. In particular, it provides for separation of powers between the executive, legislative, and judicial branches of government. Some law-making powers over certain areas of life are specifically reserved to Congress. For example, only Congress may coin money; this authority is specifically denied to the states under the Constitution. In other areas, Congress is empowered to act, but the states may enact legislation in these areas if Congress does not do so. If Congress does act, the states may not. A large body of rule-making or law-making power is reserved to the states. This is generally referred to as police power; it includes the authority to legislate concerning matters affecting public health, safety, welfare, and morals.

Thus, in general the Constitution establishes a hierarchy of rule-making or law-making authorities that may be thought of as a pyramid. At the top of this pyramid is the federal Constitution:

> This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.[1]

At the base is the broad foundation of state police power under which the states have enacted legislation governing health, welfare, education, and the like. In some areas of activity, the states delegate certain police power to municipal governments, which pass laws of their own called municipal ordinances.

States can and do make laws to cover specific types of conduct that they wish to control or eliminate, or they may adopt an entire system of laws. At the founding of the Republic, North Carolina[2] and most other states adopted a system of law known as the common law,[3] which had developed by custom and precedent over many centuries in England. To find the law under a common law system, one must look to both statutes enacted by legislatures and cases reported in the court decisions that are available. For example, the crime of assault in North Carolina is a common law offense. There is no statute making assault a criminal offense, though it is defined as such in early court cases. Statutes do, however, set forth the punishments for assault.[4] The early law of arrest governing when and under what circumstances a person may be arrested is another example of rule-making power expressed in the common law, but one that has subsequently been codified in the North Carolina statutes.[5]

Within their police powers, state legislatures are relatively free to adopt legislation concerned with public health, safety, welfare, and morals. But they may not by such legislation impinge on areas protected by the federal Constitution.[6] Most of these areas are set forth in the Bill of Rights – the first ten amendments to the Constitution. The most important amendments to law enforcement officers are the Fourth, Fifth, and Sixth amendments and the parts of those amendments that have, by court interpretation, been applied to the states by operation of the due process clause of the Fourteenth Amendment to the Constitution.

To discharge his responsibilities effectively, a law enforcement officer should have some basic understanding of how the judicial system operates. Courts decide controversies between parties involving questions of law and resolve (often with the aid of a jury) issues of fact. When the parties are private persons (or legal persons – for example, corporations), the dispute between them is called a civil action. Such an action is usually brought to obtain compensation for damages done in a tort (wrong) alleged to have been done by one party to another (such as an automobile collision) or in a breach of contract (such as a failure to deliver a car after the price had been paid). Other types of civil actions are those to compel another person to do something (specific performance), or to restrain him from doing something (injunction), or to inquire into the legality of state or federal action in restraining an individual's personal freedom (*habeas corpus*). Many of these remedies historically have been granted by the courts to alleviate the hardships of law (that is, they sought to provide justice).

When the case involves behavior defined by the statutes or common law as a crime, the action is a criminal one. The parties involved are the state, represented by the district attorney, and the accused. In a civil action, the private parties are represented by their own privately retained counsel (for which they are usually financially responsible),

but in a criminal action, the state must provide the accused person with a lawyer if he cannot otherwise afford one[7] and if the offense carries a possible penalty of imprisonment.[8]

The basic steps in the criminal justice system are indicated in Chart 2-I (pages 58-59), and also the basic features of the juvenile justice system, which has some features in common with both the criminal and the civil systems.

Recent United States Supreme Court decisions have held that while due process (a legal concept implying fairness in dealing and legal action subject[9] to limits) is constitutionally assured to the juvenile as well as the adult,[10] not all of the trappings of the adult criminal system (such as trial by jury) are necessary to assure constitutionally adequate due process in juvenile cases.[11] To preserve the long-recognized protective features of the juvenile justice system,[12] the Constitution will tolerate several features unique to the juvenile setting. As Chart 2-I indicates, the connection between the juvenile justice system with the larger criminal justice system ends with the arrest stage. Thereafter different procedures are followed. Chart 2-II briefly summarizes some of these differences.

Traditionally children have been viewed as having few if any legal rights. The law has always recognized parental rights, such as the right to custody of one's own child or the right to discipline one's child,[13] which are frequently interrelated with the traditional legal duties of parents – to support the child and see that he receives an education and moral instruction. The first cases that began to clarify the constitutional rights of parents and children were focused on parental rights, as for example, the right of parents to have their children instructed in a foreign language,[14] to send their children to private sectarian schools,[15] and even to withhold their children from public schools if school attendance conflicts with the parents' religious beliefs.[16] More recently, cases have focused on and given content to rights that are the child's,[17] such as the right to an equal educational opportunity[18] or to freedom of speech.[19]

The original idea that the child has no legal rights was explained and justified by ancient doctrine of *parens patriae*, inherited from the English legal system, which originally cast the state as a protector of children's persons and property interests. This doctrine has been used by the courts as a legal rationale for allowing the state to assume a parental role toward children whose parents were viewed as failures. Thus, under the concept of *parens patriae*, nineteenth-century legislation authorized the commitment of neglected or delinquent children to institutions under informal procedures. This legislation was sustained against arguments that such commitments violated traditional notions of parental rights and due process of law. *Parens patriae* is a part of North Carolina law, having been incorporated in the law in 1911 by a

North Carolina Supreme Court decision that used the doctrine to uphold the constitutionality of legislation establishing the Stonewall Jackson Manual Training and Industrial School at Concord.[20] It has since been used to sustain legislation establishing the state's juvenile justice system.[21]

Chart 2-II

Similarities of the Juvenile Cases to Civil and Criminal Cases

Similarities to Civil System

1. Use of a semicivil procedure to initiate juvenile case, including a juvenile petition and summons, rather than a criminal warrant.

2. Selective prehearing detention based on need of child for secure custody in order to protect community; child has no right to bail or release on bail in cases of prehearing juvenile detention.

3. No grand jury indictment of children alleged to be delinquent to test probable cause that child should be prosecuted.

4. No right to jury trial in delinquency cases; judge who exercises juvenile jurisdiction performs fact-finding function of jury.

Similarities to Criminal System

1. Four of the Bill of Rights protections applicable to state juvenile proceedings to adjudicate delinquency if the child alleged to be delinquent may lose his freedom by commitment to an institution, including:

   a. That portion of the Sixth Amendment requiring the accused "be informed of the nature and cause of the accusation" applies to give the child the right to written notice of the charges or facts to be considered at the juvenile hearing far enough ahead to provide an opportunity to prepare to answer the charges.

   b. That portion of the Sixth Amendment that guarantees the accused the right to counsel for his defense applies to give the child the right to counsel, including the right to assigned counsel in cases of indigency.

   c. That portion of the Fifth Amendment stating that the accused may not "be compelled in any criminal case to be a witness against himself" applies to guarantee the child the same privilege against self-incrimination.

   d. That portion of the Sixth Amendment that gives the accused the right "to be confronted with the witnesses against him" applies to give the child the right to confront witnesses against him, who must be sworn and be subject to cross-examination.

2. The standard of proof applicable in criminal cases – proof beyond a reasonable doubt – is applicable when the delinquent act would be a crime if committed by an adult.

The principle of *parens patriae* is explained by the United States Supreme Court as follows:

> The right of the state as *parens patriae* to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right "not to liberty but to custody." He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions – that is, if the child is "delinquent" – the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the "custody" to which the child is entitled. On this basis, proceedings involving juveniles were described as "civil" not "criminal" and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.[22]

While the decision from which this description came – **In re Gault** – did not invalidate the concept of *parens patriae*, it did place constitutional limitations on the scope of the concept by requiring certain procedural safeguards in the determination of delinquency in state juvenile courts. **Gault** requires that certain constitutional protections, formerly thought available only to adults, be extended to children who are alleged to be delinquent – notice, right to counsel, the privilege against self-incrimination, and the right to confront and cross-examine witnesses – essentials of the constitutional guarantee of procedural due process. Thus the old notion that children have no legal rights is changing, and **Gault** rejects the validity of *parens patriae* as a rationale for denying procedural due process to children:

> The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. The phrase was taken from chancery practice, where, however, it was used to describe the power of the state to act in loco parentis for the purpose of protecting the property interests and the person of the child. But there is no trace of the doctrine in the history of criminal jurisprudence.[23]
>
> . . . [U]nder our Constitution, the condition of being a boy does not justify a kangaroo court.[24]

Under recent North Carolina decisions, the doctrine of *parens patriae* has continued as the legal rationale for the right of the state to provide special procedures for juveniles. The courts, relying on the

powers of the state under the *parens patriae* concept, have found that the legislation establishing separate and less formal procedures for juveniles is constitutional. Still, law enforcement personnel should be careful to follow procedures that provide due process of law whenever they intervene in family life, or take custody of a child, or arrest a child for behavior defined as delinquent or undisciplined, or take other action involving loss of freedom by a child.

Other legal rights of children are now emerging. While some have been identified, not all have yet been implemented, and these will await future clarification and definition by courts or legislatures. Examples of these rights include:

- *Right to a Free Public Education.* The North Carolina Constitution requires that the General Assembly provide "for a general and uniform system of free public schools . . . wherein equal opportunities shall be provided for all students."[25] Does this mean that school fees are unconstitutional? What does this provision mean in regard to the education of the mentally retarded, emotionally disabled, or physically handicapped?
- *Right to Treatment.* If a delinquent child is committed to training school, does he have a right to treatment of his medical, psychological, educational, or psychiatric needs while he is institutionalized?
- *Right to Due Process in Disciplinary Actions in Schools and Other Institutions,* If a child runs away from training school, is he entitled to notice and a hearing before he is punished? Is he entitled to counsel? What about disciplinary actions by teachers and principals in public schools? Must the principal or teacher follow procedures that provide procedural due process of law in administering discipline? In explusions? In suspensions?

Chapter 2

Notes

1. U.S. Const., art. VI, § 2.
2. N.C. Gen. Stat. § 4-1 (1969).
3. *See* E. McWhinney, *Legal Systems: Common Law Systems*, 9 International Encyclopaedia of the Social Sciences 211 (1968).
4. N.C. Gen. Stat. § 14-33.
5. N.C. Gen. Stat. § § 15-39, -41.
6. *E.g.*, Winters v. New York, 333 U.S. 507 (1948).
7. Klopfer v. North Carolina, 386 U.S. 213 (1967); Gideon v. Wainwright, 372 U.S. 335 (1963).
8. Argersinger v. Hamlin, 407 U.S. 25 (1972).

9. For a complete historical discussion, *see* A. Howard, **Road from Runnymede: Magna Carta and Constitutionalism in America** (1968).

10. Kent v. United States, 383 U.S. 541 (1966); **In re** Gault, 387 U.S. 1 (1967); **In re** Winship, 397 U.S. 358 (1970).

11. McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

12. A. Platt, **The Child Savers: The Invention of Delinquency** (1969); H. Lou, **Juvenile Courts in the United States** (1927); Mack, *The Juvenile Court*, 23 **Harv. L. Rev.** 104 (1909).

13. State v. Alford, 68 N.C. 322 (1873); State v. Pendergrass, 19 N.C. 365 (1837).

14. Meyer v. Nebraska, 262 U.S. 390 (1923).

15. Pierce v. Society of Sisters, 268 U.S. 510 (1925).

16. Wisconsin v. Yoder, 406 U.S. 205 (1972).

17. *See id.* at 241 (Douglas, J., dissenting).

18. Brown v. Board of Education, 347 U.S. 483 (1954); *see also* Weiss, *The Emerging Rights of Minors*, 4 **U. Toledo L. Rev.** 25 (1972); Gyory, *The Constitutional Rights of Public School Pupils*, 40 **Fordham L. Rev.** 201 (1971).

19. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

20. *E.g.*, **In re** Watson, 157 N.C. 340, 72 S.E. 1049 (1911).

21. State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920); **In re** Burrus, 275 N.C. 517, 169 S.E.2d 879 (1969), *see sub nom.* McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

22. **In re** Gault, 387 U.S. 1, 17 (1967).

23. *Id.* at 16.

24. *Id.* at 28; on the continuing vitality of Gault, *see* Argersinger v. Hamlin, 407 U.S. 25, 33-4 (1972).

25. **N.C. Const.**, art. IX, § 2(1).

3

Law Enforcement Procedures Applicable to Juveniles

BOTH THE PROCEDURES AND THE PHILOSOPHY that a law enforcement officer follows with respect to children are different from those used with adults. These differences have important legal and social consequences. Although recent Supreme Court cases have extended to juvenile offenders some of the procedural rights that have traditionally been provided to adult offenders,[1] these cases have not changed the distinct semicivil, noncriminal nature of the separate juvenile justice system.[2] The thrust of the recent procedural reforms in the juvenile justice system is to assure that children will be treated fairly in accordance with procedural due process of law.

The social consequences of the separate juvenile justice system arise from the important consequences, both positive[3] and negative,[4] that a police contact may have on a child. When a child is treated by an officer with fairness and respect, his image of the police and of authority figures generally is more favorable. Rehabilitation is the basic commitment of the juvenile justice system, and the law enforcement officer has an important part in the realization of this goal. Because of the way the juvenile justice system operates, police action plays a significant role in what later happens to the child. In this sense, the law enforcement officer serves as the crucial entry point or gatekeeper into the juvenile justice system – with the capacity to determine who enters the system and who does not.[5]

Few studies have been made of the impact of police conduct on subsequent juvenile behavior.[6] The studies that are available emphasize the important shaping or molding quality of the juvenile-police encounter. For example, sociologists have recognized that a negative experience with a law enforcement officer can lead to further delinquent behavior, or recidivism. If a child perceives that he is viewed as bad or if he is treated with hostility by the police, the treatment he receives may

structure a self-fulfilling prophecy in which the child feels that he is expected to be bad, and acts accordingly.[7]

Because police conduct can shape later juvenile behavior in this way, the law enforcement officer should try to assume a positive approach in working with children, particularly in an initial encounter. He should be able to relate to a child, treating him with respect even though the child's behavior and attitude are hostile. The officer should express acceptance of the child by not suggesting in any way that he is a bad person or that the officer disapproves of his family or social, cultural, or racial background.

Childhood is a formative period when a young mind develops attitudes toward self, other people, and authority. It is important that the law enforcement officer help lay a positive foundation in the child's attitude toward himself as a worthwhile human being, toward the police, and toward "the system." If appropriate attitudes are developed in the police-juvenile encounter, it will be easier for the child and his family to relate to other appropriate community resources or to other parts of the system such as the court or probation services.

The Encounter. The types of encounters between children and police that can arise have been classified by sociologists[8] as follows: (1) those that result from officers' spotting officially "wanted" youths; (2) those that take place at or near the scene of offenses reported to police headquarters; and (3) those that occur as the result of officers' direct observation of youths either committing offenses or in "suspicious circumstances." The first type arises from an active case in which the child is within the authority of the court; it may arise from a court order. The latter two are more like the standard police investigatory situation. The officer should remember that the extent of authority over juveniles is wider than it is with adults because the juvenile jurisdiction includes status offenders who have not committed a criminal offense. For children, being in "suspicious circumstances" may include hanging around poolrooms or being on the streets at late hours; these are activities covered by the juvenile jurisdiction over undisciplined children, a category defined to include runaways and children regularly found in places where it is unlawful for children to be.[9]

Juvenile Jurisdiction and the Police. North Carolina distinguishes two categories of juvenile offenders: (1) delinquents – those who have committed an offense that would be a crime if committed by an adult or who have violated probation;[10] and (2) undisciplined – those who are truant or beyond parental control or have run away from home (so-called status offenders).[11] Children who fall into either of these categories are by statute subject to the juvenile jurisdiction of the district

court.[12] (A summary of North Carolina juvenile statutes and their applicability according to the age of the offender appears in Chart 3-1. Appendix I contains the text of several of those statutes.)

The scope of the juvenile justice system is determined by a number of variables. In cases of delinquent or undisciplined behavior, the child's act – whether a criminal offense, and if so, whether a felony or a misdemeanor – and his age when he commits the act are important factors.[13] For most purposes, the juvenile jurisdiction extends to age sixteen. Below that age, most child offenders are handled within the juvenile justice system.

Discretion and Diversion. The exercise of police discretion and the need to divert children from the juvenile justice system are important matters to be considered by every police officer who encounters child offenders. Police discretion, or selective law enforcement, is a reality for juveniles just as it is for adult offenders.[14] Generally speaking, however, state juvenile laws do not provide for the exercise of discretion,[15] and North Carolina law is no exception.

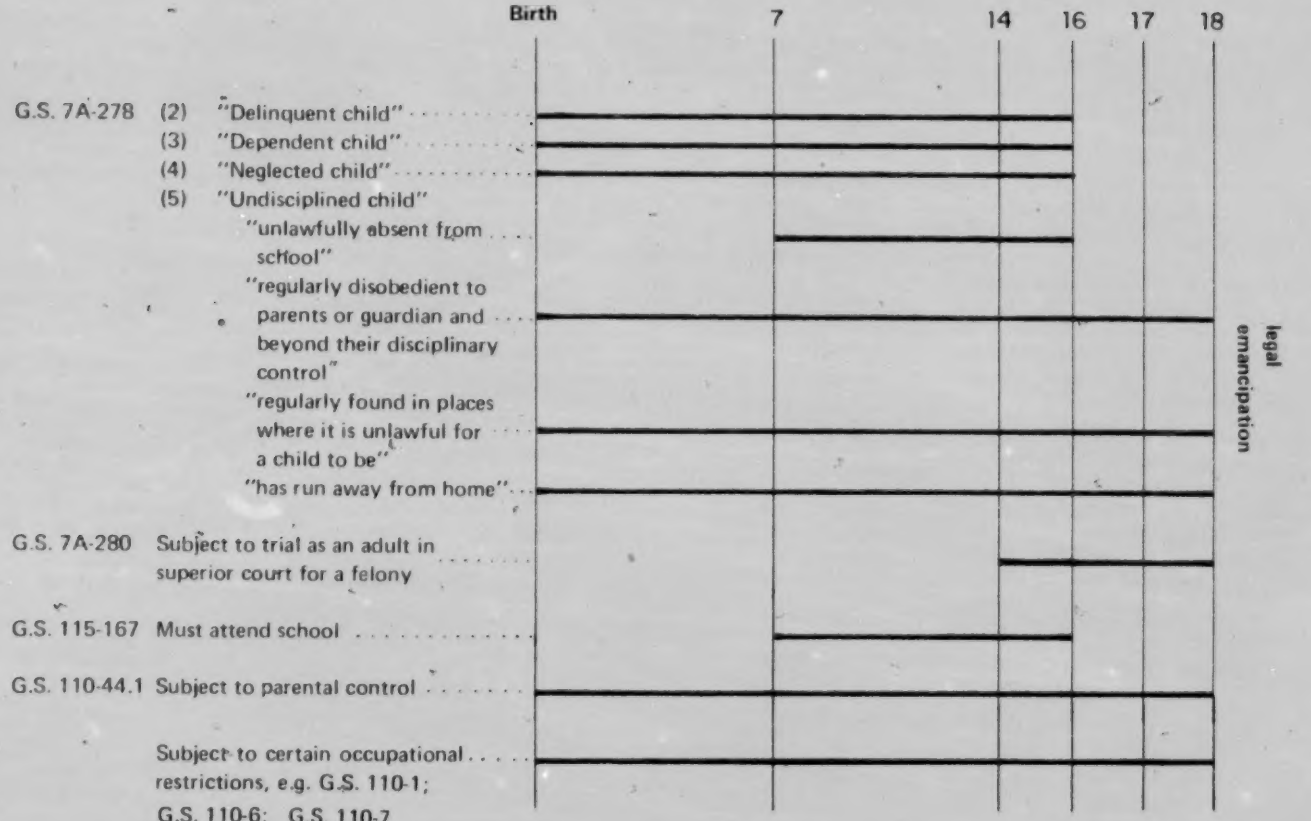
Police discretion is not without certain problems and dangers. These include (1) a potential for abuse by an officer in the unequal treatment of offenders; (2) a lack of opportunity for supervision within the system over the use made of discretion; and (3) a low level of visibility in the decision-making process brought about by the fact that a decision not to enforce may go unreported and unrecorded and thus unnoticed by anyone but the officer himself and the person released, who is usually happy to be on his way without further interference. Because of these problems, little is known about the actual operation of discretion. Without more information, an appraisal is impossible. Even an efficient law enforcement department is penalized by discretion as it now operates. Without information, it is difficult to know who is using discretion effectively and where and when to apply the knowledge that person has acquired elsewhere to improve over-all efficiency.

Guidelines for using discretion with juveniles should be developed that specify and limit the occasions on which an officer may exercise discretion and judgment (and statutes should be amended to clarify its legal position). Departments should also provide a forum in which cases that have been handled through the officer's discretion may be reviewed and tested against those departmental guidelines so that complaints of abuses, raised by either parents or the child himself, may be investigated and problems resolved. To provide more information on the application of discretion within a given department, and thus permit intelligent supervision of the use of discretion, a system of reporting police encounters with juveniles should be instituted.

Diversion is a process by which an officer may refer a child offender or his family to a community resource rather than initiate a juvenile

Chart 3-I

Applicability of Selected Juvenile Statutes by Age


Birth
7
14
16
17
18
legal emancipation
G.S. 7A-278 (2) "Delinquent child"
(3) "Dependent child"
(4) "Neglected child"
(5) "Undisciplined child"
"unlawfully absent from school"
"regularly disobedient to parents or guardian and beyond their disciplinary control"
"regularly found in places where it is unlawful for a child to be"
"has run away from home"
G.S. 7A-280 Subject to trial as an adult in superior court for a felony
G.S. 115-167 Must attend school
G.S. 110-44.1 Subject to parental control
Subject to certain occupational restrictions, e.g. G.S. 110-1; G.S. 110-6; G.S. 110-7

case by signing a juvenile petition. Chart 3-II lists some ways of handling a case that are open to an officer, and it reflects the relationship between discretion and diversion. Yet these two practices differ in at lease two major respects. Discretion is frequently used when there is no way for the officer to continue contact or to follow up. Confronted by a situation in which he could arrest, the officer chooses not to do so, and the child goes his way. In some cases, discretion or selective nonenforcement presents the officer with a relatively narrow range of options. He has no basis on which to make his choice regarding the child's future.

Diversion is a practice recommended by the President's Commission on Law Enforcement and Administration of Justice:

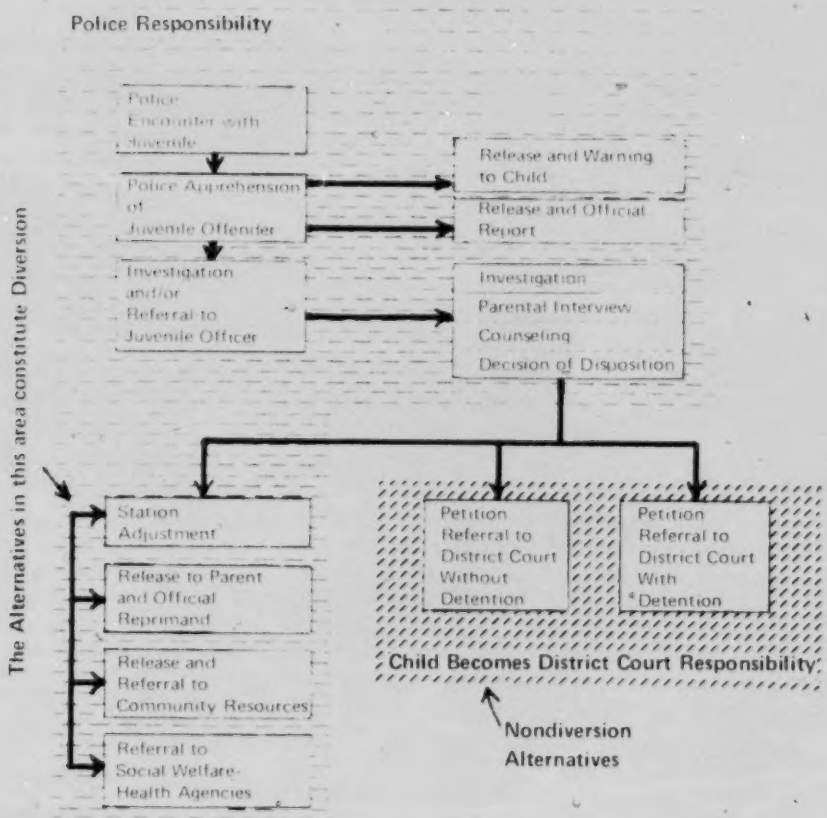
> The formal sanctioning system and pronouncement of delinquency should be used only as a last resort.
>
> In place of the formal system, dispositional alternatives to adjudication must be developed for dealing with juveniles, including agencies to provide and coordinate services and procedures to achieve necessary control without unnecessary stigma. Alternatives already available, such as those related to court intake, should be more fully exploited.
>
> The range of conduct for which court intervention is authorized should be narrowed, with greater emphasis upon consensual and informal means of meeting the problems of difficult children.[16]

The theory behind diversion is that the less contact a child has with the juvenile justice system, the better. A recent amendment to the North Carolina juvenile statutes that encourages use of community-based services in dealing with juvenile offenders gives implicit support to this policy.[17] In this way, the law enforcement officer may consider which dispositional alternatives will best serve the needs and interests of the child. These alternatives are:

(1) To divert the child from the system by
   (a) release
   (b) release and report
   (c) counsel and release
   (d) release to parents
   (e) referral to
      community resources
      school
      professional aid
(2) To place the child into the system by seeking a petition from district court, or
(3) To seek a petition and detain the child in custody.

Chart 3-II

Police-Juvenile Dispositional Alternatives


Police Responsibility
Police Encounter with Juvenile
Police Apprehension of Juvenile Offender
Investigation and/or Referral to Juvenile Officer
Release and Warning to Child
Release and Official Report
Investigation
Parental Interview
Counseling
Decision of Disposition
The Alternatives in this area constitute Diversion
Station Adjustment
Release to Parent and Official Reprimand
Release and Referral to Community Resources
Referral to Social Welfare-Health Agencies
Petition Referral to District Court Without Detention
Petition Referral to District Court With Detention
Child Becomes District Court Responsibility
Nondiversion Alternatives

Of course only those options under alternative (1) constitute diversion, since only they fall short of the petition that would take a child before the court. These three alternatives differ in important respects, and the officer must weigh their use carefully.

Alternative (1) may shield the child from any stigma or damage from within the juvenile justice system. It should be used whenever possible. Many of the options under this alternative offer continued contact and follow-up with the child – possibilities not generally open when ordinary discretion is used. Some departments have sought to remedy this by using what has been called "police probation" – a system of requiring a child to report to a police officer about his activities on a periodic basis. Because of the inevitable coercion entailed in such programs, which require participation under threat of further legal sanctions before any independent determination of guilt or innocence has been made, this practice has been criticized by writers on police work and should not be considered as a valid exercise of discretion.[18]

Alternative (2) – that is, seeking a petition – assumes that the services of the juvenile justice system are needed in order to help the child when immediate custody (as for a serious crime) is *not* required but the level of misbehavior is serious enough or has occurred frequently enough that the officer in his careful judgment feels that diversion would not be wise. The pre-arrest petition process is to be preferred over arrest, since it is least disruptive of the child's home life and protects the officer and the department from unnecessary involvement in nonpolice matters.

Alternative (3), detention, should be used primarily in cases of arrest for crimes – generally more serious crimes when there is danger either to the community if the child is not restrained or to the child if he is returned home or when there is reason to believe that the child would attempt to leave the geographical jurisdiction of the court. (See Chapter 5 for a discussion of juvenile detention.) Custody may be used whenever warranted for a delinquent or undisciplined child. In deciding how to handle a case, law enforcement officers should recognize that diversion is usually most desirable and try to develop rational and reviewable policies to achieve that goal.

Arrest. The foregoing discussion has focused on those steps of law enforcement procedure that precede the decision to arrest and on suggested alternatives – discretionary options – that the policeman may use instead of arrest. Once the decision to arrest has been made, the procedures suggested in this section should be followed.

Police authority to take a child into custody arises in two basic situations: (1) custody under court order after a petition has been filed,[19] and (2) arrest custody without a petition or court order.

The legal basis for taking a child into custody without a court order has never been clarified in North Carolina by either statute or court decision. Law enforcement officers have presumed to act under the broad, unexamined authority of *parens patriae* – the power of the state to assume protective custody of children within the juvenile jurisdiction[20] but the **Gault** case took a dim view of the constitutional validity of this doctrine by which:

> The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.
>
> These results were to be achieved, without coming to conceptual and constitutional grief, by insisting that the proceedings were not adversary, but that the state was proceeding as *parens patriae*. The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. The phrase was taken from chancery practice, where, however, it was used to describe the power of the state to act *in loco parentis* for the purpose of protecting the property interests and the person of the child. But there is no trace of the doctrine in the history of criminal jurisprudence. At common law, children under seven were considered incapable of possessing criminal intent. Beyond that age, they were subjected to arrest, trial, and in theory to punishment like adult offenders. In these old days, the state was not deemed to have authority to accord them fewer procedural rights than adults.
>
> The right of the state, as *parens patriae*, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right "not to liberty but to custody." He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions – that is, if the child is "delinquent" – the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the "custody" to which the child is entitled. On this basis, proceedings involving juveniles were described as "civil" not "criminal" and therefore not subject to the requirements which restrict the state when it seeks to deprive a person of his liberty.
>
> Accordingly, the highest motives and most enlightened impulses led to a peculiar system for juveniles, unknown to our law in any comparable context. The constitutional and theoretical basis for this peculiar system is – to say the least – debatable.[21]

The Gault case did not overrule *parens patriae* but merely subjected it to certain due process restraints; hence, North Carolina is technically free to rely on the doctrine. But if the matter were to come squarely before the Supreme Court again, the doctrine could be struck down and with it the legal basis for taking juveniles into custody without any statutory authorization.

Parens patriae is not, however, the only rationale that has been thought to provide law enforcement officers a basis for their power to take custody of juveniles. At least two other theories have been offered to explain the existence of this general law enforcement power over children: (1) that the law of arrest from which law enforcement officers derive their power is coextensive with the statute creating state jurisdiction over delinquent and undisciplined children;[22] and (2) that a status offense may be viewed as analogous to a misdemeanor committed in the officer's presence, so that the officer derives authority to arrest from the law of arrest.[23] Whatever the theory followed, a law enforcement officer should have authority to take custody of children within the juvenile jurisdiction of the court if he has probable cause to believe they are within that jurisdiction. Further, even a child younger than fourteen – the age of criminal capacity – is not immune from arrest.[24]

This discussion discloses some of the ways in which children are viewed as legally different from adults. Under the law of arrest, the authority to arrest an adult is clear – an officer may arrest with a warrant and also without a warrant for both misdemeanors committed in his presence and felonies if he has reasonable grounds for believing that a felony has been committed and that the perpetrator will escape.[25] A juvenile may be taken into custody under a court order, but otherwise the statutes offer no guidance on taking a child into custody. The present adult arrest provisions do not provide practical help because juvenile proceedings are essentially noncriminal, so that applying the law of arrest seems inappropriate.[26]

What does seem clear is that law enforcement officers may take juvenile violators into custody under the same circumstances as when an adult could be arrested. Whatever vitality the concept of *parens patriae* has, it at least means that juveniles may be taken into custody with fewer restrictions than apply to the arrest of adults. This fact becomes important to two particular problems involving juveniles – the arrest of the minor misdemeanant and the arrest of the status offender.

The first situation occurs when a child commits a misdemeanor out of the officer's presence. Here the officer would not have authority to arrest an adult, and he probably should not arrest the child. Rather, he should seek a juvenile petition and a detention order from the court if the child requires secure custody before the juvenile hearing.

As described in the statutes, juvenile detention following arrest is essentially a two-step process consisting of (1) the filing of a petition,[27] and (2) a determination by the district court judge (or after hours, by

his authorized substitute) that detention is necessary for either of two reasons – the community's protection or the child's best interests.[28] If detention is required, the place of detention is limited to juvenile detention homes or separate jail facilities specified by statute.[29]

These statutory provisions meet at least three basic needs. First, they provide notice to the child's parents or guardian.[30] Second, the petition procedure meets due process requirements by providing a hearing on whether the facts alleged in the petition[31] are sufficient to invoke the juvenile jurisdiction of the court. Third, the court must weigh the need for detention against the two criteria set forth in the statute – the community's protection and the child's best interests.[32]

Police detention that does not conform to these statutory requirements is not authorized and is therefore illegal.

Runaways. One special provision of the General Statutes relates to runaways – the Interstate Compact on Juveniles.[33] This agreement provides for the return from other states of both delinquent and nondelinquent juveniles who have run away from home.[34] A provision of the federal Social Security Act authorizes the use of federal funds to pay for transportation and maintenance for up to fifteen days of runaways under age eighteen.[35]

Searches. Courts have sought to define the limited freedom of police to investigate and to take reasonable precautionary measures in situations that involve activity of a suspicious nature when the officer lacks sufficient information to constitute probable cause (the so-called "stop and frisk").[36] In general, the Fourth Amendment applies to children, but its exact application is not clear. A child is not exempt from search because he is a juvenile, though all of the restraints that apply to the search of an adult apply with equal force to the search of a child. For example, *without* probable cause the officer may not proceed to search beyond a weapons pat-down.[37]

When a child is arrested, the officer must consider whether to search him. The best routine procedure seems to be to search a juvenile offender who is being arrested in a proper manner, being careful that the child's dignity is protected. Weapons are increasingly being found on juvenile offenders, and a few juvenile offenders pose a threat to the officer's safety. Further, it seems important to determine whether the child has illegal drugs on his person when he is arrested. The officer's technique and approach in conducting a search are important. Unnecessary physical handling should be avoided. The indignity caused by an inappropriate search may be harmful to the child and could frustrate the objectives of the juvenile justice system.[38]

In searches other than those incident to arrest, the law is somewhat clearer where the policeman is involved. Cases have upheld the

right of school officials to inspect or search lockers and college dormitory rooms without a warrant,[39] but the same right does not extend to the police.[40] It appears that an illegal search at a school made by the police does not become lawful by virtue of being made jointly with the principal. Apparently, a policeman may not use the legally favored position of the principal or other school official to conduct searches without a warrant.

Station House Disposition — Fingerprints and Photographs. North Carolina's statutes provide for fingerprinting any person charged with a felony or any misdemeanant reasonably believed to possess stolen goods or to be a fugitive from justice.[41] In an advisory opinion[42] the Attorney General has ruled that fingerprinting of children should be limited to children aged fourteen or older who are alleged to be felony offenders when the court's juvenile jurisdiction over them could be waived and they could be tried as adults in superior court. The practice most consistent with the rehabilitative goals of the juvenile system is to avoid fingerprinting and photographing young children altogether and to use such techniques for those over fourteen only in cases of felony offenses. (It should be noted that the recommendations of the International Association of Chiefs of Police reproduced in Appendix II are contrary to this recommendation.)

Miranda and the Child. Often neither the statutes nor case law is sufficiently clear about the application of North Carolina juvenile law.[43] The applicability of **Miranda**[44] to juveniles is one example. The *Rules of Procedure Applicable to Children in the District Court*[45] recommend that **Miranda** warnings be given, and many police departments in this state already routinely administer them.[46] The rule that makes this recommendation is based on the belief that the warnings afford substantial protection for both the child and the police and thus should be given. The rule provides:

> No extra judicial statement by any child alleged to be delinquent or undisciplined shall be admitted unless it was made in the presence of the child's parent, custodian, guardian or attorney, and made after the child and the adults present were advised that the child had a right to remain silent, that any statement made might be used against him in court, and that he had a right to consult with counsel, and a right to have counsel appointed if not then represented before making a statement.[47]

In a case involving the statement made by an eight-year-old child arrested by a school investigative officer, the North Carolina Court of

Appeals noted the absence of **Miranda** warnings but did not dispose of the case on that ground.[48]

On the other hand, although **Gault** carefully avoids the question of applying **Miranda** to children,[49] even popular magazines have begun to emphasize the crucial role the lawyer plays in protecting a child's rights during interrogation.[50] Also, some jurisdictions have held that a child's request to see his parents (after receiving a **Miranda** warning and before questioning) is in effect a child's way of invoking the Fifth Amendment privilege protected by **Miranda** and the police should not question the child further in the absence of his parents:

> It appears to us most likely and normal that a minor who wants help on how to conduct himself with the police and wishes to indicate that he does not want to proceed without such help would express such desire by requesting to see his parents. For adults, removed from the protective ambit of parental guidance, the desire for help naturally manifests in a request for an attorney. For minors, it would seem that the desire for help naturally manifests in a request for parents. It would certainly severely restrict the "protective devices" required by **Miranda** in cases where the suspects are minors if the only call for help which is to be deemed an invocation of the privilege is the call for an attorney. It is fatuous to assume that a minor in custody will be in position to call an attorney for assistance and it is unrealistic to attribute no significance to his call for help from the only person to whom he normally looks – a parent or guardian. It is common knowledge that this is the normal reaction of a youthful suspect who finds himself in trouble with the law.[51]

The rehabilitative goals of the juvenile justice system are best served when police help whenever possible to secure the aid of parents or counsel for an arrested child.

Chapter 3

Notes

1. *E.g.* Kent v. United States, 383 U.S. 541 (1966); **In re** Gault, 387 U.S. 1 (1967); **In re** Winship, 397 U.S. 358 (1970).

2. McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

3. Stuart, *Aftermath of Apprehension: Social Scientist's Response*, 3 **Prospectus** [Mich. J.L. Reform] 13 (1969); *see also The Effect of "Getting Caught": Apprehension of the Juvenile Offender as a Cause of Subsequent Delinquencies*, 3 **Prospectus** 1 38 (1969).

4. Gold & Williams, *National Study of the Aftermath of Apprehension*, 3 **Prospectus** 3 (1969).

5. For an interesting discussion of the independent rights of apprehended children by a Jesuit and former law dean of Boston College, now a congressman from Massachusetts, *see* Drinan, *Aftermath of Apprehension: Family Lawyer's Response*, 3 **Prospectus** 31 (1969).

6. *E.g.*, 26 **Rutgers L. Rev.** 488 (1973); Davis, *Justice for the Juvenile: The Decision to Arrest and Due Process*, 1971 **Duke L. J.** 913; Ferster, Courtless & Snethen, *Separating Official and Unofficial Delinquents: Juvenile Court Intake*, 55 **Ia. L. Rev.** 864 (1970); Ferster, Snethen & Courtless, *Juvenile Detention: Protection, Prevention or Punishment?* 38 **Fordham L. Rev.** 161 (1969); Ferster & Courtless, *The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender*, 22 **Vand. L. Rev.** 567 (1969); Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 **Harv. L. Rev.** 775 (1966); Piliavin & Briar, *Police Encounters with Juveniles*, 70 **Am. J. Soc.** 206 (1964).

7. Lemert, *The Concept of Secondary Deviation in Human Deviance, Social Problems and Social Control* (1967), reprinted in **Deviant Behavior and Societal Reaction** 24 (ed. Boydell, Grindstaff, and Whitehead, 1972); *see* discussion in Cressey & McDermott, **Diversion from the Juvenile Justice System** 2 (1973).

8. Piliavin & Briar, *Police Encounters with Juveniles*, 70 **Am. J. Soc.** 206 (1964); *see* Woodbury, *Delinquents' Attitudes Toward the Juvenile Justice System*, 32 **Psych. Reports** 1119, 1123 (1973), for a partial validation of this study in North Carolina.

9. **N.C. Gen. Stat.** § 7A-278 (5); **N.C. Gen. Stat.** § 110-53.

10. **N.C. Gen. Stat.** § 7A-278 (2).

11. **N.C. Gen. Stat.** § 7A-278 (5).

12. **N.C. Gen. Stat.** § 7A-279.

13. State v. Coble, 181 N.C. 554, 558, 107 S.E. 132, 134 (1921).

14. *See* K. Davis, **Discretionary Justice: A Preliminary Inquiry** 80-96 (1969); Note, *Juvenile Delinquents, State Courts, and Individualized Justice*, 79 **Harv. L. Rev.** 775 (1966); Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 **Yale L. J.** 543 (1960); *see also* the recent statements of Professor Yale Kamisar quoted in 18 **Am. Bar News** 5 (August 1973). The legal basis for the exercise of discretion by police is somewhat questionable; *see* **N.C. Gen. Stat.** § 14-230; State v. Hord, 264 N.C. 149, 155, 141 S.E.2d 241, 245 (1965). *See also* 4 **Crim. J. Newsletter** 2 (July 1973), and Lemert, **Instead of Court: Diversion in Juvenile Justice** (1971).

15. Goldstein, *supra* note 14, at 557-58.

16. **Task Force Report: Juvenile Delinquency and Youth Crime** 2 (1967).

17. **N.C. Gen. Stat.** § 7A-286 (5); Chused, *The Juvenile Court Process: A Study of Three New Jersey Counties*, 26 **Rutgers L. Rev.** 488 (1973).

18. *E.g.*, G. O'Connor & N. Watson, **Juvenile Delinquency and Youth Crime: The Police Role** 42-43 (1964); R. Myren & L. Swanson, **Police Work with Children** 13-14 (1962). *See* especially the discussion in R. Kobert & B. Bosarge, **Juvenile Justice Administration** 71-3 (1973).

19. **N.C. Gen. Stat.** § 7A-284, -285; *see* State v. Sparrow, 276 N.C. 499, 173 S.E.2d 897 (1970) (details the procedure to be followed in obtaining a court order.)

20. **In re** Burrus, 275 N.C. 517, 534, 169 S.E.2d 879, 889-90 (1969), *aff'd*, 403 U.S. 528 (1971).

21. 387 U.S. 1, 15-17 (1967).

22. *See* **In re** James L., Jr., 194 N.E.2d 797 (Juvenile Ct. Cuyahoga Co. Ohio, 1963) (held that the law of arrest does not apply to juveniles and that a police officer may assume protective custody without a court order if he has reasonable grounds to believe that a child is delinquent, undisciplined, neglected, or dependent); Marschall v. City of Carson, 28 Nev. 107, 464 P.2d 494

(1970) (upheld taking a juvenile into custody without a warrant when there was probable cause to believe that a felony had been committed and that the juvenile had committed it). **In re** Samuel, 10 Cal. App. 3d 565, 89 Cal. Rptr. 246 (1970) (upheld warrantless arrest of a thirteen-year-old child three days after he was apprehended in possession of a cigarette that turned out to contain marijuana; at the time of arrest, the officer had reasonable cause to believe an offense had been committed). *Cf. Ex parte* Singer, 285 P.2d 955, 134 C.A.2d 542 (1955) (custody is illegal when detention is for other than a condition specified in the statute).

23. *See* **In re** Moten, 242 So.2d 849 (1970) (upholding on rehearing an adjudication of delinquency for two runaway girls based upon custody assumed without court order but merely on one mother's complaint following a warrantless and protested entry into a private home; the condition of being a runaway was an unlawful activity analogous to a misdemeanor committed in the officer's presence and sufficient to confer on him arrest authority; the warrantless entry was not an unreasonable search). *But see* State v. McCloud, 276 N.C. 518, 526, 173 S.E.2d 753, 759 (1970) [decided the same day as State v. Sparrow, 276 N.C. 499, 173 S.E.2d 897 (1970) *supra* at note 19], in which the Court (per Branch, J.) said, "It would seem that unless the misdemeanor is committed in the presence of the officer in the sense that at the time of its commission through his sensory perception he might know that a misdemeanor is being committed in his presence or have reasonable ground to believe that a misdemeanor has been committed in his presence, an arrest cannot be made without warrant."

24. *See* Bond v. Wabash R. R. Co. 363 S.W.2d 1 (1962) (infancy provides no immunity from arrest even when the law will presume incapacity to commit crime).

25. **N.C. Gen. Stat.** § 15-41 (1) (2).

26. Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969), *rev'd on other grounds*, 442 F.2d 29 (7th Cir. 1971) (capture and detention of juvenile was a seizure under the Fourth Amendment despite a statutory declaration that taking children into custody was not an arrest; held that the Fourth Amendment probable cause requirement was applicable to juveniles held for a delinquency hearing).

27. **N.C. Gen. Stat.** § 7A-281.

28. **N.C. Gen. Stat.** § 7A-286 (3).

29. **N.C. Gen. Stat.** § 110-24.

30. **N.C. Gen. Stat.** § 7A-281; *see* **N.C. Gen. Stat.** § 14-72.1 (c) (1973) on notification required when a child sixteen or younger is detained for shoplifting.

31. **N.C. Gen. Stat.** § 7A-281.

32. **N.C. Gen. Stat.** § 7A-286 (3).

33. **N.C. Gen. Stat.** § 110-58.

34. **N.C. Gen. Stat.** § 110-58; *see* Wendell, *The Interstate Compact on Juveniles: Development and Operation*, 8 **J. Pub. Law** 524 (1959), on the background of this compact.

35. 42 U.S.C. 622 § (a) (2) (1970).

36. Terry v. Ohio, 392 U.S. 1 (1968) (upholding a weapons pat-down of an adult), *accord*, **In re** Lang, 404 Misc.2d 900, 255 N.Y.S.2d 987 (1965) (upholding frisk of juvenile gang members).

37. Peters v. New York, 392 U.S. 40 (1968) (search with probable cause). *Cf.* companion case of Sibron v. New York, 392 U.S. 40 (1968) (no probable cause for search). *See* State v. Streeter, 283 N.C. 203, 195 S.E.2d 502 (1973). But *cf.* Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969) discussed *supra* note 26. When an officer makes a full custody arrest, he may make a full search incident to arrest, United States v. Robinson, 414 U.S. 218 (1973). *See also* State of Delaware v. Baccino 282 A.2d 869 (1971) (search by school officials covered by the Fourth Amendment and must be based on reasonable suspicion).

38. Terry v. Ohio, 392 U.S. 1, 17 (1968).

39. Moore v. Student Affairs Comm., 284 F. Supp. 725 (M.D. Ala. 1968); Overton v. New York, 20 N.Y.2d 260, 229 N.E.2d 283 (1967), *cert. denied, sub. nom.* Overton v. Rieger, 401 U.S. 1003 (1971) (school authorities have a right to inspect school lockers that ripens into "a duty when suspicion arises that something of an illegal nature may be secreted there"); State v. Stein, 203 Kan. 638, 456 P.2d 1 (1969), *cert. denied, sub nom.* Stein v. Kansas, 397 U.S. 947 (1970) [upheld a search made by a principal on police officer's request on the theory that (1) a student gives implied consent to search by accepting a locker, and (2) the student's expectation of exclusivity of use relates to other students but not to school authorities].

40. **In re** Donaldson, 269 Cal. App.2d 509, 75 Cal. Rptr. 220, (1969) (dicta) (upheld a warrantless search by assistant principal made on a tip by another student and without the student's consent. The court in this case strongly indicated that on the same facts, a joint search by police and school officials would have been tainted with state action. Police abuses in using school officials to circumvent the warrant requirement would probably also be suspect.

41. **N.C. Gen. Stat.** § 114-19; Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969). *See* Davis v. Mississippi, 394 U.S. 721 (1969), which overturned a conviction based on fingerprints obtained by a dragnet arrest without probable cause. Defendant's age (14) apparently was not a factor in the outcome of the case. The Court left open the question of the standard of cause required to bring an accused in for fingerprinting absent probable cause. *Cf.* State v. Accor, 277 N.C. 65, 175 S.E.2d 583 (1970), holding that arrest on probable cause or waiver of Fourth Amendment privilege is necessary in order to photograph.

42. 40 N.C. Atty. Gen. Opinions 670 (1968-70).

43. **N.C. Gen. Stat.** § 110-29 (6), recodified and amended as § 7A-280. The creation of juvenile fingerprints and photographs appears unaffected by **N.C. Gen. Stat.** §§ 90-113, -15, which provide only for expunging records of criminal convictions of minor misdemeanants. Since delinquency adjudications are not criminal convictions under **N.C. Gen. Stat.** § 7A-287 (1969), records of the arrest of children are not affected. *See* the recommendations on record in Myren & Swanson, **Police Work with Children** 77-94 (1962). Other states such as New York and California have detailed statutes dealing with juvenile jurisdiction and procedure. Although many of the powers detailed there are no doubt vested in North Carolina law enforcement officers by operation of the common law [**N.C. Gen. Stat.** § 4-1], the adoption of such detailed statutes in North Carolina would clarify considerably the authority of police personnel. The California provisions read as follows:

West's Anno. Calif. Wel. & Insts. Code (1972)

§ 600. Persons subject to jurisdiction

Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court.

(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.

(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode.

(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

(d) Whose home is an unfit place for him by reason of neglect, cruelty, depravity, or physical abuse of either of his parents, or of his guardian or other person in whose custody or care he is.

§ 601. Minors habitually refusing to obey parents; habitual truants; minors in danger of leading immoral life

Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, custodian or school authorities, or who is beyond the control of such person, or any person who is a habitual truant from school within the meaning of any law of this state, or who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court.

§ 602. Minors violating laws defining crime; minors failing to obey court order

Any person under the age of 18 years who violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

§ 625. Temporary custody; peace officer; warrant

A peace officer may, without a warrant, take into temporary custody a minor

(a) Who is under the age of 18 years when such officer has reasonable cause for believing that such minor is a person described in Sections 600, 601, or 602, or

(b) Who is a ward or dependent child of the juvenile court or concerning whom an order has been made under Section 636 or 702, when such officer has reasonable cause for believing that person has violated an order of the juvenile court or has escaped from any commitment ordered by the juvenile court, or

(c) Who is under the age of 18 years and who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.

In any case where a minor is taken into temporary custody on the ground that there is reasonable cause for believing that such minor is a person described in Section 601 or 602, or that he has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court, the officer shall advise such minor that anything he says can be used against him and shall advise him of his constitutional rights, including his right to remain silent, his right to have counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel.

§ 625.1 Temporary custody; peace officer; commission of public offense or felony by minor

A peace officer may, without a warrant, take a minor under the age of 18 into temporary custody as a person described in Section 602:

(a) Whenever the officer has reasonable cause to believe that the minor has committed a public offense in his presence.

(b) When the minor has committed a felony, although not in the officer's presence.

(c) Whenever the officer has reasonable cause to believe that the minor has committed a felony, whether or not a felony has in fact been committed.

(d) Whenever the minor has been involved in a traffic accident and the officer has reasonable cause to believe that the minor had been driving while under the influence of intoxicating liquor or under the combined influence of intoxicating liquor and any drug.

44. 384 U.S. 436 (1966).

45. Raleigh, Administrative Office of the Courts (1970).

46. Noted in field visits to Asheville, N.C.; Burlington, N.C.; Buncombe County, N.C.; and Greensboro, N.C.

47. *Supra* note 45, at 33.

48. **In re** Ingram, 8 N.C. App. 266, 174 S.E.2d 89 (1970) (follows "totality of circumstances" test). *See also* State v. Dawson, 278 N.C. 351, 362 S.E.2d (1971), in which the court in dicta notes that a minor is competent to waive his privilege against self-incrimination. State v. Dawson relies on People v. Lara, 67 Cal.2d 265, 62 Cal. Rptr. 586, 432 P.2d 202 (1967), a pre-Miranda case using the so-called "totality of circumstances" test grounded not in the Fifth but in the Fourteenth Amendment; *see* Haley v. Ohio, 332 U.S. 596 (1948) (age fifteen), Gallegos v. Colorado, 370 U.S. 49 (1962) (age fourteen), and provides a second requirement for police to meet, i.e., an avoidance of coercive activity that violates due process requirements of fundamental fairness. On the difficulties inherent in the "totality of circumstances" test, *see Recent Development*, 1972 **U. Ill. L.F.** 625.

49. **In re** Gault, 387 U.S., 1 (1967) ("'. . . we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process"). *Id.* at 13.

> We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique but not in principle – depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, Juvenile Courts and appellate tribunals in administering the privilege. If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary in the sense not only that it was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair. *Id.* at 55.

50. Robinson, *What to Do If Your Child Is Arrested*, 103 **Reader's Digest** 166 (November 1973).

51. People v. Burton, 491 P.2d 793, 797-98, (1971).

4

The Use of Juvenile Detention Resources

ONE BASIC REASON for establishing the juvenile court and the separate juvenile justice system was to separate juvenile from adult offenders in jails and prisons.[1] A juvenile detention home – a significant part of the separate juvenile justice system – is approximately the equivalent of the jail in the adult criminal justice system. Yet there are differences between them – such as the fact that detention is used selectively for only certain types of children – so that a procedure that is sound for adults is not necessarily sound for children. Thus, a law enforcement officer who deals with child offenders needs to know: What is a juvenile detention home? Where are they available in North Carolina? When should a child be placed in a detention home? When is it permissible to detain a child in jail? What procedures should be followed to place a child in a detention facility?

What a Juvenile Detention Home Is and What It Is Not. In general, a juvenile detention home is a facility for pre-hearing detention of a child who (1) is within the jurisdiction of the juvenile court as being delinquent or undisciplined, and (2) requires secure custody either for the community's protection or for the child's best interests.[2] It is a facility separate from a jail and different from a juvenile cell in a jail. It should provide secure custody – that is, be physically designed to confine or contain the children placed therein. It should have a staff and program of activities for children placed there so that their period of time in confinement will not be destructive.

North Carolina statutes have something to say about what a juvenile detention home must be:

> A juvenile detention facility shall be located in a building designed to provide secure custody which meets State stan-

> dards and shall have such personnel as may be necessary to provide for the supervision and safety of the children being detained. A juvenile detention home shall provide a program for children detained therein which meets the standards of the Department of Human Resources, and such program shall be designed to provide wholesome activities in the best interest of the children placed therein.[3] (Effective July 1, 1975.)

A juvenile detention home is not a shelter care facility, nor is it to be used for placing neglected or dependent children; such use is not authorized by statute in North Carolina and is not considered good practice. In general, a law enforcement officer should contact the county department of social services in regard to placing neglected and dependent children. See Chapter 5 on child abuse and neglect for details.

A juvenile detention home should not be used as punishment for undisciplined or delinquent children. For example, it is difficult to justify the use of a juvenile detention home for a child whose only offense is truancy unless his behavior in other ways constitutes some threat to persons or property in the community. Further, a juvenile detention home is different from other treatment resources for children whom the court has found to be delinquent or undisciplined. It is not a training school for long-term treatment. It is a short-term resource that provides secure custody either before the hearing or after the disposition of a juvenile case before the child is admitted to a training school or other treatment resource if he needs to be kept in secure custody either for the community's protection or in his own interests.

Use of Juvenile Detention Homes. In general, children who come within the juvenile jurisdiction of the district court as delinquent, undisciplined, neglected, or dependent may not legally be placed in a jail or prison in North Carolina:

> It shall be unlawful for any child coming within the provisions of Article 23 of General Statutes Chapter 7A to be placed in any jail, prison or other penal institution where such child will come into contact with adults charged with or convicted of crimes, except that a court may detain a child in a jail with a holdover facility for juveniles approved by the Department of Human Resources as meeting the State standards as provided by Part 3, Article 3, General Statutes Chapter 108 and Article 10, General Statutes Chapter 153A.[4] (Effective July 1, 1975.)

The law authorizes pre-hearing detention with reference to only two categories of juvenile jurisdiction – delinquent and undisciplined:

> Children who are alleged or adjudicated to be delinquent or undisciplined as defined by Article 23, General Statutes Chapter 7A, and who require secure custody for the protection of the community or in the best interest of the child may be temporarily detained in a county detention home or a regional detention home as defined by G.S. 134-36 which shall be separate from any jail, lockup, prison or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the State standards of the Department of Human Resources.[5] (Effective July 1, 1975.)

As you will note, this statute also provides that a child may be detained *only* if detention is necessary for the community's protection or in his best interest. Thus, a child who is taken into custody as delinquent or undisciplined should not routinely be taken to the juvenile detention home as the officer would usually take an arrested adult offender to jail. The confinement of a child in pre-hearing detention is a selective decision, not a routine procedure. Ordinarily, when an officer picks up a child, he will take the child home and release him to his parents. On the infrequent occasions when secure custody is required for the community's protection or to meet the needs of the child, the officer must seek judicial authority to detain the child before the juvenile hearing.

Age Factors in Use of Juvenile Detention. The statute quoted above authorized juvenile detention when a child is alleged to be in either of two categories of juvenile jurisdiction – delinquent or undisciplined. Since these two categories have different age limits, the officer must consider age in each case. In general, for purposes of the juvenile jurisdiction of the district court, a child is defined as a person less than sixteen years of age.[6] The "undisciplined child" category represents an exception; in this category of juvenile jurisdiction, a child is "any person who has not reached his eighteenth birthday and is not married, emancipated or a member of the armed forces of the United States."[7] Thus, pre-hearing detention under juvenile procedures is authorized for children alleged to be delinquent who are less than sixteen years of age and for any minor child less than eighteen who is alleged to be undisciplined. Also, it would be unlawful to detain a child alleged to be undisciplined in a local jail unless the requirements of the law authorizing jail detention of children are complied with.

Criteria for Detention. As we have seen, North Carolina law provides two broad guidelines for appropriate use of detention. It authorizes juvenile detention (1) when a child is alleged to be delinquent or undisciplined, (2) if the court "finds it necessary that such child be detained

in secure custody for the protection of the community or in the best interest of the child before or after a hearing on the merits of the case."[8]

The first criterion suggests that a juvenile petition should be signed in regard to any child being considered for placement in a juvenile detention home. The statute refers to a child "alleged to be delinquent or undisciplined"; this reference is to both the allegations in a juvenile petition that the child is either delinquent or undisciplined and the facts showing that the child is within one of these two categories of juvenile jurisdiction.[9] Thus, a primary rule of juvenile police procedure is that a child may never be detained without a juvenile petition to initiate the case; this petition should allege the facts about the offense and show that the child fits one of the statutory criteria for pre-hearing juvenile detention.

The second criterion may be the more important; it contains several parts that should be separately considered. A child alleged to be delinquent or undisciplined may be detained "where the court finds it necessary that such child be detained in secure custody" in two situations: (1) "for the protection of the community"; or (2) "in the best interest of the child." Thus the need that the child be detained "in secure custody" is the basic consideration in all cases of juvenile detention.[10]

The portion of the statute reading "where the court finds it necessary that such child be detained," is important, for it means that the *decision to detain is a judicial one*; that is, the district court judge who exercises juvenile jurisdiction must decide whether detention is necessary. This responsibility is unusual, because this decision is not based on the notice and hearing that ordinarily precede such an exercise of judicial authority. The judge in effect is placed in the position of making a judicial decision based entirely on the allegations of the juvenile petition. He may, if the circumstances specified in the statute exist, order that a child be taken into custody and placed in a juvenile detention home.

The situations in which a judge may order detention of a child alleged to be delinquent or undisciplined are in one instance fairly specific, in the other rather broad. The authority to detain a child "for the protection of the community" refers to the control of a child whose behavior constitutes such a threat to persons or property in the community that the judge must detain him in secure custody for the community's protection until a hearing is held on the merits of the case. Thus if a child is alleged to be delinquent for stealing or for personal assaults or property damage, the judge may well believe on the basis of the information contained in the juvenile petition that such behavior will continue in the interim between the signing of the juvenile

petition and the date of the juvenile hearing – i.e., that the child's family will not be able to see that he does not continue his hostile acts against the community. The judge may then authorize the pre-hearing detention to protect persons or property in the community.[11]

The authority to detain a child alleged to be delinquent or undisciplined "in the best interest of the child" is more broad, leaving the judge considerable discretion to order pre-hearing detention when he finds secure custody to be required and believes that it is in the child's interest. Such a case could involve a runaway – a child would be detained to prevent him from roaming the community or leaving the geographical jurisdiction of the court. Or the judge might, for example, detain a child alleged to be delinquent or undisciplined who is also a material witness in a criminal case for the child's protection if he is believed to be in some danger.

Use of Jails for Detaining Children. From the time the juvenile court system was established in 1919 until 1967, it was illegal to detain a child less than sixteen in a local jail.[12] Nevertheless, children were placed in jails when pre-hearing detention was required because juvenile detention homes were available only in a few urban counties of the state. In point of fact, the law was more honored in its breach than in being followed. To avoid continued violations, the statute was amended in 1967 to allow detention of children younger than sixteen in jails when three specific circumstances exist – when it is necessary to hold a child in secure custody, when no juvenile detention home is available, and when the jail has a separate cell so that the child may be isolated from the adult jail population.[13] This basic concept was carried forward when the juvenile laws were rewritten in 1969, so that the statute now permits a judge to authorize jail detention of a child alleged to be delinquent or undisciplined in specific situations until July 1, 1975. Beginning July 1, 1975, the 1974 legislation making it unlawful to detain children in local jails becomes effective:

> It shall be unlawful for any child coming within the provisions of Article 23 of General Statutes Chapter 7A to be placed in any jail, prison or other penal institution where such child will come into contact with adults charged with or convicted of crimes, except that a court may detain a child in a jail with a holdover facility for juveniles approved by the Department of Human Resources as meeting the State standards . . . .

Essentially the 1974 legislation provides a structure in state government for developing a regional approach to juvenile detention that will provide statewide detention services on a regional basis in rural

counties to supplement the county detention homes that now provide services in urban areas.[14] Thus, the law may be summarized as follows:

(1) Until July 1, 1975, the general policy of the law is that no child alleged to be delinquent who is less than sixteen nor any child (that is, no one under eighteen) alleged to be undisciplined may be placed in a jail. Jail detention of such children is legally permissible only when a juvenile detention home is not available. Thus, detaining such a child in jail in a county that operates a juvenile detention home is illegal. Beginning July 1, 1975, jail detention of such children is unlawful except in an approved holdover facility for up to seventy-two hours pending placement in a regional juvenile detention home.

(2) Whether to detain any child within juvenile jurisdiction in jail is a decision to be made by the district judge on an individual basis when there is "pressing need" to hold the child in secure custody and only when no juvenile detention home is available.

(3) The child may be legally detained only in a jail that is physically arranged so that he has no contact with the adult jail population.

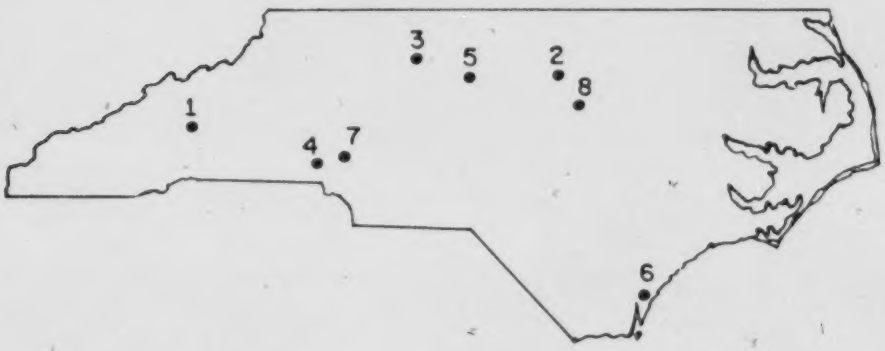
(4) Also, the law gives the jailer a special responsibility for supervising a child in jail: "The personnel responsible for administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child."

Location of Juvenile Detention Homes. As of March 1, 1974, eight juvenile detention homes were located in eight urban counties of North Carolina: (1) Buncombe County Receiving Home, Asheville; (2) Durham County Juvenile Detention Center, Durham; (3) Forsyth County Youth Center, Winston-Salem; (4) Gaston County Juvenile Detention Home, Dallas, near Gastonia; (5) Guilford County Juvenile Detention Home, Greensboro; (6) Lower Cape Fear Juvenile Services Center, Castle Hayne, near Wilmington; (7) Mecklenburg County Juvenile Diagnostic Center, Charlotte; (8) Wake County Juvenile Detention Center, Raleigh. The location of each of these facilities is shown by its number shown above on the map of North Carolina on the next page.

Procedure for Detaining A Child. When a law enforcement officer who is investigating a case involving a child decides that he should seek to have the child placed in pre-hearing detention, he must assure that the circumstances of this case meet all the statutory requirements for detaining the child, and then he must fulfill certain procedures that are unique to juvenile cases.

- First, the officer must decide whether the child meets the statutory criteria for pre-hearing juvenile detention – that is, (1) his behavior brings him within either of the two categories of juvenile jurisdiction

EXISTING JUVENILE DETENTION FACILITIES



for which detention is authorized, delinquent or undisciplined; and (2) he needs to be placed in secure custody either for the community's protection or in his own best interest. In general, most child offenders should be left in their parents' care before the juvenile hearing unless secure custody seems necessary.

- The officer must initiate a juvenile case by signing a juvenile petition that shows the child to be within the correct category of juvenile jurisdiction, the facts that bring the child within juvenile jurisdiction, and the facts that indicate a need for pre-hearing juvenile detention. During normal working hours when the courthouse is open, the officer should go to the office of the clerk of superior court or the intake court counselor to file a juvenile petition or make a complaint if intake services are established in the district.

Since the need for juvenile detention often arises after hours when the office of the clerk of superior court or the court counselor is not open, the statute gives the chief judge of the district court the legal authority to authorize a magistrate or other court official to issue juvenile petitions in emergency situations after hours when the magistrate or official is requested to do so by a juvenile probation officer, a family counselor, a representative of the county department of social services, or a law enforcement officer. When a juvenile petition is issued after hours by a magistrate or other court official, it must be delivered to the clerk of superior court's office for customary processing as soon as the clerk's office reopens for business.[15]

• Having initiated a juvenile case by signing a juvenile petition, the officer must secure judicial authority to detain the child. Whether to detain a child is a judicial decision, and the law enforcement officer is not empowered to make it; he has only the right to bring such cases to the attention of the court counselor or the judge through signing a juvenile petition showing the need for juvenile detention. Thus, the necessary next step is securing a court order for detaining the child. The court counselor has statutory authority to help determine whether detention is needed.

During normal working hours, the best procedure might be to work with the the chief court counselor. Except in extraordinary circumstances, it is always necessary to have a written detention order, signed by the district judge who has juvenile jurisdiction, when the child is taken to the juvenile detention home. The judge should discuss any case requiring pre-hearing detention with the officer who is seeking juvenile detention in order to learn the facts in the case.

The reality seems to be that the need for juvenile detention often arises after court has adjourned or on weekends or late at night. To provide for after-hour detention cases, the statute allows the judge to delegate his detention authority in certain circumstances:

> In order to provide authority for approval of detention care when the district court is not in session, the chief district judge or the district judge having primary responsibility for hearing juvenile cases in the district may delegate the court's authority to detain by administrative order which shall be filed in the office of the clerk of superior court. Such administrative order shall specify which judicial officials shall be contacted for approval of detention in the following order: any available district judge; the chief juvenile probation officer or any juvenile probation officer; or the clerk or assistant clerk of superior court.[16]

Thus, the officer should follow whatever procedure may be outlined in an administrative order filed under the statute. In general, any officer who works with children should have an understanding with the district judge who hears juvenile cases about procedures to be followed in juvenile cases that require detention.

• Once the officer has a court approval for detaining a child, it is generally his responsibility to transport the child to wherever he will be detained, whether it be a detention home or the separate cell of a local jail. When he delivers the child to the detention facility, the officer should leave a copy of the court order if he has one.

• A child in pre-hearing juvenile detention may not legally be held for

more than five calendar days.[17] In computing the five-day period, holidays and weekends should be counted. In computing the number of days a child has been detained, the date on which he was taken into custody is not counted, but the last day of detention is counted.

The statute as amended in 1973 contemplates a detention hearing within five days, for it refers to "a hearing to determine the need for continued detention under the special procedures established by this Article." Thus, the juvenile hearing within five days need not deal with the child's case on its merits. A detention hearing is concerned with whether the child needs to continue in detention – i.e., whether he still needs the secure custody provided by detention "for the protection of the community or in the best interest of the child." The statute also contains requirements concerning the court order after such a detention hearing:

> If the judge orders that the child continue in the detention home or jail after such a hearing to determine the need for continued detention, the court order shall be in writing with appropriate findings of fact.[18]

Studies of Needs and Problems in Juvenile Detention. During 1972 and 1973 three groups studied juvenile detention in North Carolina and made recommendations that have not yet been implemented. These studies have a common theme – the need for a statewide approach to the problems of juvenile detention.

(1) The Penal System Study Committee of the North Carolina Bar Association issued its report, *As the Twig is Bent*, in May 1972. Its recommendations include the establishment of a uniform system of detention homes and community-based programs in lieu of so many commitments to training school.[19]

(2) The *Report of the Governor's Advisory Committee on Youth Development*, issued in January 1973, contains four recommendations relating to juvenile detention. Essentially, it recommends that counties be encouraged to cooperate in establishing juvenile detention facilities on a regional basis; that state funds be made available on a matching basis to meet construction and operating costs of these facilities; that the facilities be required to meet state standards; and that the facilities be used primarily for secure custody of a delinquent child whose hostile behavior threatens the community; and that diagnostic evaluation be available when possible on both an inpatient and an outpatient basis.[20]

(3) The most comprehensive study of juvenile detention in North Carolina was done in 1972 by the National Juvenile Detention Association of Sarasota, Florida, under a contract with the North Carolina State Department of Social Services, which is now known as the Social Services Division, Department of Human Resources. The report that

emerged from this study recommends a plan for a statewide approach to the problems of juvenile detention in North Carolina. This plan would use the existing eight juvenile detention facilities operated by county governments, with additional state funding for facilities, staff, and program so that these facilities could be used on a regional basis. The report also proposes that the state develop five additional regional detention facilities to serve the rural areas of the state that now have no services.[21]

A most valuable aspect of this report is the insight it gives into detention practices in North Carolina during the study period. The study team collected data from juvenile case records for 1971 from the 100 North Carolina counties. The major findings of the report on detention practices may be summarized as follows.[22]

• *Variations in Police Practices.* The report mentions two police departments and how they handle juvenile offenders (Asheville and Greensboro). The Community Services Bureau, Asheville Police Department, investigates about 300 juvenile cases per month; it files juvenile petitions in 10 to 15 cases per month. The Greensboro Police Department referred 39 per cent of the juvenile cases it investigated in 1971 to the district court by juvenile petition; children were detained in 36 per cent of the cases in which juvenile petitions were filed. In Guilford County, approximately 50 per cent of the children who were subject to pre-hearing juvenile detention were released at the adjudicatory juvenile hearing, which suggests that detention in secure custody was probably not necessary in many of these cases.

• *Intake and Control of Detention Admissions.* The report notes that the statutes governing juvenile procedures in North Carolina provide no uniform procedure for screening detention requests before the court hearing in order to prevent unnecessary or improper use of juvenile detention facilities. In cases in which the child was detained before a hearing, the judge frequently had no direct contact with the officer or other person who filed the juvenile petition, or with the child or his parents. Therefore, the judges sometimes made detention decisions without adequate information about either the need for secure custody of the child before the juvenile hearing or the possibility of alternatives to detention.

A related problem is the variation in quality and availability of juvenile probation services. In some districts, the court counselors or juvenile probation personnel in the county department of social services were not involved in juvenile cases until after the adjudication hearing,

which could be as late as five days after a child had been detained. As a result, many children were detained without adequate consideration of whether detention was required or even whether a juvenile petition should have been filed. Since many children who were subject to pre-hearing detention were released at the time of the hearing, it seems probable that pre-hearing detention could sometimes have been avoided if the case had been referred to the court counselor or juvenile probation personnel for consideration of the need for detention and possible alternatives.

• *Rates of Juvenile Detention.* The report noted wide differences in juvenile detention rates that result from differences in detention policy and intake procedures. The rates of juvenile detention in North Carolina in 1971 ranged from 8.74 per 10,000 people in the general population in the Fourteenth Judicial District (Durham County) to 29.37 per 10,000 population in the Fifth Judicial District (New Hanover and Pender counties). In general, the report concludes that the detention rate was excessive in North Carolina in 1971, and that the excess was partly attributable to the instances of detention before the hearing when the child did not require secure custody.

The National Council on Crime and Delinquency has suggested that the rate of juvenile detention should not exceed 10 per cent of the juvenile cases referred to court by juvenile petition. If this standard is used, each of the eight juvenile detention homes in North Carolina detained too many children in 1971, since the rate of detentions to juvenile petitions ranged from 18 per cent to 60.5 per cent.

The study notes that the extent to which juvenile petitions are filed varies with local administrative policy and practices. For example, the number of juvenile petitions filed in relation to the total population of the district was more than twice as high in the Fifth, Eighteenth, and Twenty-Sixth judicial districts as in any other judicial district. The study concludes that the ratio of detentions to the total population is a better index of the extent to which children are detained than the ratio of detentions to juvenile petitions filed. It suggests that an annual detention rate of 10 children per 10,000 persons in the population would be a reasonable basis for estimating juvenile detention needs in a judicial district or region of the state.

• *Inappropriate Use of Juvenile Detention.* The study documents varying ideas and philosophies among judges and court personnel about appropriate use of juvenile detention and suggests that juvenile deten-

tion is often used for the wrong reasons, leading to detention rates that are too high and detention practices that conflict with generally accepted principles of juvenile detention. The study concludes that the excessive use of detention and training school commitment reflects the scarcity of community-level services for children across North Carolina.

Their report cites a number of examples of inappropriate use of juvenile detention:

- For punishment of children who did not require secure custody before or after the juvenile hearing.
- Excessive use in truancy cases, particularly when a child for whom secure custody is not required is brought back to court for violating probation by failing to attend school.
- Detaining a child primarily to give him the benefit of diagnostic services available in the juvenile detention home.
- Detaining a child to give him the benefit of the school program available in the juvenile detention home.
- Detaining an undisciplined or delinquent child for whom secure custody is not required to remove him from an unsatisfactory home situation.
- Filing a juvenile petition alleging a child to be undisciplined so that the juvenile detention home may be used as a shelter facility for him even though he does not require secure custody, or filing a juvenile petition for the same purpose in counties that have no receiving home or special boarding home to care for dependent and neglected children.

The study concludes that detaining children referred to court for undisciplined behavior as a disciplinary or remedial procedure when secure custody is not required is a major reason for the excessive detention in many counties.

These practices reflect a variety of judicial attitudes toward juvenile detention. Some judges feel that detention is an appropriate and effective way to discipline chronic truants. Other judges agree with the policy of detaining children for undisciplined conduct for punitive or remedial reasons. While it may on occasion be necessary to detain a runaway to assure his appearance, the practice should not be routine; in some cases, a runaway will have returned home and will remain there pending the court hearing or can be placed in a nonsecure shelter facility or boarding home. The report notes that the rotation of judges who hear juvenile cases results in inconsistent court policies in regard to detention.

• *Variations in Quality of Detention Programs.* The study notes the wide variations among the eight juvenile detention homes in physical facilities, staff, and quality of program. In some, the program is little more than custodial care. In others, the program includes individual and

group counseling, recreational activities, a school program, tutoring, physical examinations, medical care, psychological testing, and others. In two counties (New Hanover and Mecklenburg), the detention home administrators had developed special programs to fill needs that had not been met by other community agencies.

• *Expenditures for Detention Services.* The per capita expenditures for each child in detention care varied during 1971 from $123.26 in Gaston County to $361.08 in Mecklenburg County.

• *Use of Jails for Detaining Children.* The report noted that in North Carolina the practice of detaining juveniles in jails continues to be a serious problem that should be eliminated. An examination of juvenile court records for 1971 reveals that on 1,541 occasions children were detained in local county jails in that year, and the records of the Division of Jail and Detention Services, State Department of Social Services, indicated 539 other instances in which juveniles had been detained in either city or county jails. This means that there were at least 2,080 cases of jail detention of children in North Carolina during 1971. The report states that the court records indicate that the types of cases represented by juveniles held in local jails varied widely and that the average length of stay was approximately two days. Some of the children detained were simply neglected children, and detaining them was in violation of North Carolina law.

• *Legislative Implementation of Detention Study.* The 1974 General Assembly enacted legislation to implement the detention study report to be effective July 1, 1975.[23] The new law provides for statewide regional juvenile detention services by January 1, 1979. The eight existing county-administered detention homes will be converted to regional programs through state subsidies for both operating costs and the cost of detention care for children who do not reside in the county. Five or more new regional detention homes will be developed and administered by the state to provide statewide detention services that will include rural counties previously without such services.

The state-level responsibility for detention services is to be shared by two state agencies: the Division of Facilities Services in the Department of Human Resources and the Division of Youth Development in the Department of Correction. The reason for this division of authority is stated in the law – "so that the providers of juvenile detention care will be subject to inspection by a separate agency." The "providers" will be counties that operate county-administered homes that provide regional services and the state through the Division of Youth Development, which will administer state regional juvenile detention homes. The inspector will be the Division of Facilities Services, which will be

charged with development of state standards (the law requires new standards by July 1, 1977), consultation, technical assistance, and training as well as inspection.

Under the new law, neither a county nor the state may legally operate a juvenile detention home that does not meet state standards. Further, a county must meet state standards for detention care in order to be eligible for state subsidies for operating costs and for the per capita cost of caring for a nonresident child.

Chapter 4

Notes

1. *See* for example, Lou, **Juvenile Courts in the United States** (1927), particularly Chapter II on the history of the juvenile court.

2. **N.C. Gen. Stat.** § 7A-286 (3) provides for pre-hearing detention as well as detention after a hearing on the merits for children alleged to be delinquent or undisciplined. **N.C. Gen. Stat.** § 110-24 contains both the general requirements for juvenile detention homes and language similar to that of **N.C. Gen. Stat.** § 7A-286 (3) limiting detention to children who are alleged or adjudicated to be delinquent or undisciplined.

3. **N.C. Gen. Stat.** § 110-24 (to be effective on July 1, 1975, as amended by the 1974 General Assembly).

4. *Id.*

5. *Id.*

6. **N.C. Gen. Stat.** § 7A-278 (1).

7. *Id.*

8. **N.C. Gen. Stat.** § 7A-286 (3).

9. **N.C. Gen. Stat.** § § 7A-281, 286 (3).

10. *See* **N.C. Gen. Stat.** § 7A-286 (3).

11. *See* Rule 7, *Detention in Secure Custody* in **Rules of Procedure Applicable to Children in the District Court** (Administrative Office of the Courts, Raleigh, 1970), which restates the applicable statute at that time. Since publication of these rules, the General Assembly has amended the statutes to make certain minor modifications.

12. N.C. Public Laws, 1919, c. 97, § 10, later codified as **N.C. Gen. Stat.** § 110-30, amended in 1967, repealed in 1969.

13. N.C. Public Laws 1967, c. 1207.

14. **N.C. Gen. Stat.** § 110-24.

15. **N.C. Gen. Stat.** § 7A-281.

16. **N.C. Gen. Stat.** § 7A-286 (3).

17. *Id.*

18. *Id.*

19. **As the Twig is Bent, A Report on the North Carolina Juvenile Corrections System** 9 (Penal System Study Committee, N.C. Bar Association, Raleigh, May, 1972).

20. **Report of the Governor's Advisory Committee on Youth Development** 15-16 (Raleigh, 1973).

21. **Juvenile Detention in North Carolina: A Study Report** (National Juvenile Detention Association, Sarasota, Florida, January 26, 1973).

22. *Id.* The eight topics summarized here were selected by the authors, keeping in mind the kind of information that should be known to law enforcement officers. While the material in the summary comes from the entire report, the major points will be found on pages 13-24.

23. *See* N.C. Session Laws 1974 to be codified as **N.C. Gen. Stat.** § 110-24; **N.C. Gen. Stat.** § 134-35 to -39; **N.C. Gen. Stat.** § 153A-221.1.

5

Child Abuse and Neglect

OUR SOCIETY HAS ALWAYS ASSUMED that parents will love and protect their children. This assumption is reflected in the decisions of courts that have refused to interfere in family government and in laws that have relieved parents from civil liability or criminal prosecution for injuries resulting from their efforts to correct and discipline their children. To preserve family harmony, the law of evidence provides that normally neither husband nor wife may testify against the other in a criminal case in which one spouse is the defendant. The traditional emphasis of the law has been on protection of parental rights rather than on protecting children from abusive parents or on the rights of children.

This policy of the law is changing.[1] The right or duty of the state to intervene in family life to protect children has emerged over the last 150 years. While the complex and emotional problems related to parental abuse and neglect of their own children have largely been repressed throughout history, periods have occurred when concern for children became apparent. During the last half of the nineteenth century, reformers in various states established private child-protection societies and institutions for neglected and delinquent children. In these places neglected and delinquent children were to be educated, to receive vocational and religious training, and to learn middle-class values. Despite the good intentions of the reformers, however, children of the poor and powerless were committed to these institutions for long periods of time with little thought for procedural due process or for the rights of the children.

Concern for the rights and welfare of children bloomed again in the 1960s. One area that received special attention was parental child abuse. The evidence that emerged from X-ray technology made the problem abundantly clear. Both the professionals and the public were shocked by sensationalized news reports of how often and how badly

children are mistreated in the United States. Public concern was expressed by the term "child abuse" and professional concern by the term "battered-child syndrome."

The public and legislative reaction to this new information was angry and swift. Demands came for criminal prosecution of abusing parents that would insure prompt justice and severe punishment. But some people advocated a more thoughtful and studied approach. The resulting compromise was that all states enacted some form of child-abuse reporting law between 1963 and 1967. Several models for such legislation were proposed by various groups. The most influential model was the mandatory child-abuse reporting law proposed by the Children's Bureau of the Department of Health, Education and Welfare in 1963; it required physicians to report suspected child-abuse cases involving nonaccidental injuries to children by parents or caretakers to local law enforcement agencies. Physicians who reported in good faith were given immunity from civil or criminal liability. Failure of a physician to report was punishable under the criminal law as a misdemeanor. This model law proposed that two traditional privileges under the law of evidence be waived: the physician-patient privilege was waived to permit doctors to report and to testify in court without incurring liability for violating the confidentiality of physician-patient communications; the husband-wife privilege was waived so that one parent could testify to the abuse by the other in court proceedings; this waiver was believed necessary because child abuse often occurs in the privacy of the home with only members of the family as witnesses.

Other models proposed for reporting laws differed. The American Medical Association objected to mandatory reporting under a criminal penalty that applied only to physicians; it proposed a voluntary reporting law under which a variety of types of professionals (physicians, nurses, teachers, social workers) were authorized to report to either the police or a child welfare agency. Another model advocated child-abuse reports to a social service agency and recommended the establishment of a central registry of child-abuse cases in state government to gather data on the extent of child abuse and to provide records from which abusive parents can be followed if they move from one community to another.

The Children's Bureau model proposed reporting to the police because the police are usually available twenty-four hours per day. This model was later modified to suggest that child welfare agencies receive reports when adequate protective services were available; otherwise, reports should continue to go to the police.

North Carolina's Reporting Laws. In line with the trend across the country, North Carolina enacted its first child-abuse reporting law in 1965.[2] It was a voluntary law that authorized physicians, nurses, school

personnel, or employees of county departments of social services to report cases of child abuse or neglect by parents or anyone else standing in the place of parents. Such reports were to be made to the county director of social services, who was required to investigate and take appropriate action to protect the child. This law granted immunity from criminal or civil liability to anyone authorized to report who made a report of child abuse or neglect in good faith or who testified in a judicial proceeding that resulted from such a report. It waived the traditional physician-patient privilege under the law of evidence so that a doctor could testify in court concerning any reported child-abuse case in which he had diagnosed or treated the child.

While the 1965 voluntary child-abuse reporting law increased professional and public awareness of the complex problems related to child-abuse and neglect, it did not provide adequate protection for North Carolina children. Neither the professionals authorized to report nor the public understood the law well enough. It was codified in the chapter of the General Statutes dealing with criminal law,[3] which suggested that the purpose of the law was to punish abusers rather than primarily to protect children. Reporting child abuse or neglect was voluntary, whereas in most other states reporting was mandatory. Furthermore, only a limited group of professionals were authorized to report, so that not all persons who might know of a child needing protection were included.

The 1971 General Assembly repealed the 1965 reporting law and enacted a new child-abuse reporting law designed to correct some of the inadequacies of the first.[4] The 1971 law is mandatory rather than voluntary: anyone who knows of a child-abuse case must report it. The legal duty to report child abuse and neglect is stronger for professionals (including law enforcement officers), however, than for others. Professionals have a legal duty to report any case involving a child in which the professional has reasonable cause to suspect that the child is abused or neglected; others have a legal duty to report cases of child abuse when they have knowledge of the case. Thus professionals have a higher legal duty in that they must report *suspected* cases, and they must report both child-abuse and child-neglect cases; others are required to report only when they have knowledge, and only child-abuse cases.

Provisions of the Child-Abuse Reporting Law of 1971. The general thrust of this law is to encourage all persons to report child-abuse and neglect cases so that protective services may be provided to help the child's own parents to provide care. Thus, special provisions have made it easy, in terms of making the contact and in terms of conscience, to report child abuse and neglect.

- *Report to Whom?* The reports are to be made to a public social agency — the director of social services in the county where the child lives or is found.

• *How?* A report of child abuse or neglect may be oral, by telephone, or written. While initial reports of child abuse may be oral so that protective action can be taken quickly, abuse reports should be confirmed in writing as soon as possible. The law requires that the county director of social services report his findings in confirmed child-abuse cases to the district attorney, with a copy of the original child-abuse report attached. It is up to the district attorney to determine whether criminal prosecution is appropriate. The district attorney "may request the director to sign the appropriate criminal warrant."

• *Who Is a Professional Person with a Higher Legal Duty to Report?* The statutory definition of a "professional person" includes any law enforcement officer. It also includes any physician, surgeon, dentist, osteopath, optometrist, chiropractor, podiatrist, medical resident or intern, registered or practical nurse, hospital administrator, Christian Science practitioner, medical examiner, coroner, social worker, mental health worker, psychologist, public health worker, school teacher or principal or other professional personnel in a public or private school, and school attendance counselor.

• *What Is Child Abuse?* Child abuse that must be reported is defined by statute to include physical injuries by parents or others responsible for child care to children less than sixteen and allowing a child to live under conditions in which there is a substantial risk of such physical injuries. An abusing parent or caretaker is one who "inflicts or allows to be inflicted upon such child a physical injury by other than accidental means which causes or creates a substantial risk of death or disfigurement or impairment of physical health or loss or impairment of function of any bodily organ . . . ." It also includes anyone who is responsible for the child's care who "creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or disfigurement or impairment of physical health or loss or impairment of the function of any bodily organ . . . ." The abused-child designation also includes one whose parent or caretaker "commits or allows to be committed any sex act upon a child in violation of law."

• *What Is Neglect?* The child-abuse reporting law incorporates the broad definition of child neglect from the statutory definition of a "neglected child" in the statute defining the juvenile jurisdiction of the district court. It includes any child less than sixteen years of age "who does not receive proper care or supervision or discipline from his parent, guardian, custodian or other person acting as a parent, or who has been abandoned, or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law."

PAGES 58-59 BLANK

• *What Is Included in a Report of Child Abuse or Neglect?* A report of child abuse or neglect must include such information as the reporter may have about the situation, including the child's name and address, the name and address of his parents or other caretakers, his age, his whereabouts if he does not live at home, the nature and extent of his injury or the condition resulting from the alleged abuse or neglect, and any other information the reporter believes would be helpful in establishing the cause of the injuries or the condition resulting from abuse or neglect.

• *Oral and Telephone Reports / Identity of Reporter / Written Confirmation.* The law states: "If the report of child abuse or neglect is made orally or by telephone, the person making such report shall give his name, address, profession if a professional person, and telephone number if such person has a telephone, and the person making such a report shall confirm the information about child abuse or neglect in writing when requested by the director."

• *Professional Opinion or Professional Reporters.* The law requires that any of the designated professionals (including a law enforcement officer) who makes a report of child abuse or neglect must also include in his report – whether oral or written – his professional opinion about the nature, extent, and causes of the injuries. The statute reads: "If the person making the report is a professional person, the report shall also include his professional opinion as to the nature, extent and causes of the injuries or the condition resulting from abuse or neglect."

• *Protection to Those Who Report.* In an effort to encourage reporting without fear of civil or criminal liability, two sections of the child-abuse reporting law provide legal immunity to those who in good faith report child abuse or neglect. Any person who reports or testifies in any judicial proceeding that results from a report is immune from civil or criminal liability unless he acted in bad faith or with malice. Anyone who makes a complaint or provides information or participates in the program established by the child-abuse reporting procedure is immune from civil or criminal liability resulting from such action unless he acted with malice and without reasonable cause.

Special Role for Law Enforcement Officer. The child-abuse reporting law structures a role for any law enforcement officer in child-abuse and neglect cases that differs from his traditional role in investigating criminal offenses or in handling juvenile offenders. His first role is to report rather than to investigate; however, since child abuse may be a crime, the officer may need to conduct his usual criminal investigation with prosecution in mind. If criminal prosecution is a possibility, the investigation should be conducted with the usual attention to the rights of the accused, who will usually be the parents.

The reporting law gives the primary responsibility to *investigate* to

the county director of social services who receives a report of child abuse or neglect. The statute reads: "Any director of social services receiving a report of child abuse or neglect shall make a prompt and thorough investigation in order to ascertain the facts of the case and to evaluate the extent of the abuse or neglect." While the statute uses the word "investigate," it does not mean that the county director of social services (or other personnel from the social services department) should become a law enforcement officer, with knowledge of criminal investigation procedures and sophistication in giving **Miranda** warnings to parents who may become the subject of criminal prosecution. The law contemplates that the county department of social services will do an investigation that is primarily social to evaluate the extent to which the child is at risk and to determine whether immediate court action is needed to remove the child from his parents' custody for his protection. If criminal prosecution is likely or if **Miranda** warnings are appropriate, the statute contemplates that the county director of social services will call upon the appropriate local or state law enforcement agency for services that it is qualified to perform – criminal investigation, notice of rights of the accused, protection of evidence in a criminal case, etc. The law states: "The director may also consult with the available state or local law enforcement agencies who shall assist in the investigation and evaluation of the seriousness of any report of child abuse or neglect when requested by the director." Thus, a law enforcement officer has a legal duty to conduct a criminal investigation or provide other appropriate law enforcement services when requested by the county social services director.

Coordination of Social and Law Enforcement Services. The primary purpose of the child-abuse reporting law is to identify children at risk due to parental abuse and neglect. This identification has little meaning unless the department of social services takes prompt action to evaluate the case and takes appropriate protective action. These cases can be very serious, for a number of children die each year in North Carolina from parental abuse and neglect invplving physical injuries of various types, malnutrition, starvation, etc. (See the statistics on page 63.)

The services provided by the county department are called "protective services," which are defined by the statute to mean "casework or other counseling services to parents or other caretakers as provided or arranged by a director utilizing the staff of the county department of social services or other community resources which are designed to help such parents or other caretakers to prevent child abuse or neglect, to improve the quality of child care, to be more adequate parents or caretakers, and to preserve and stabilize family life." While the reporting law's basic thrust is protective, it also has a punitive aspect: The director must report confirmed child-abuse cases to the district attorney, who will decide about criminal prosecution. Complex legal and social issues are involved in the decision whether to prosecute. The

reporting system fails to achieve its basic objectives – protection of children and services to parents – unless the county department of social services has a plan to evaluate reports of child abuse and neglect whenever they occur around the clock. Further, effective coordination and planning between social services personnel and local law enforcement agencies are crucial to the protection of children. Each group must know its role and authority, and each must respect the professional responsibility and ability of the other.

Information about Child Abuse and Neglect from Central Registry. The reporting law provides for a central registry of abuse and neglect cases in state government in the Social Services Division, Department of Human Resources. The purpose is to compile data on the extent of abuse and neglect within the state and to identify repeated abuses of the same child or of other children in the same family. Thus, county departments of social services must furnish data for the registry from reports of child abuse and from their investigations of these reports. The data in the central registry are confidential, but may be used for study and research under policies of the Social Services Commission, Department of Human Resources. The statute states further ". . . in no event shall any data be used at any hearing or court proceeding unless based upon a final judgment of a court of law."

The state began collecting data concerning child abuse and neglect cases in 1967 in order to participate in a national survey concerning the extent of child abuse and neglect. Counties were encouraged to report such cases to a central registry beginning in January 1967. Many counties participated; some did not; some reported only confirmed cases. Since July 1, 1971, the state has required the counties to report both suspected and confirmed cases to the central registry. Table 5-I shows the increase in reporting after the law became mandatory.

Table 5-I

Number of Children Reported As Abused Or Neglected
to the Central Registry, Division of Social Services,
Department of Human Resources

Fiscal Year	Child Abuse		Neglect		Total		Percentage of Reported Cases Confirmed
	Reported	Confirmed	Reported	Confirmed	Reported	Confirmed	
7/67 6/68	142	75	1,324	755	1,366	830	57%
7/68 6/69	205	139	1,587	1,048	1,792	1,187	66%
7/69 6/70	193	126	2,028	1,435	2,221	1,563	70%
7/70 6/71	247	139	2,721	1,645	2,968	1,784	60%
7/71 6/72	1,038	639	5,761	3,727	6,844	4,366	64%
7/72 6/73	1,602	746	8,462	5,351	10,064	6,097	61%
7/73 12/73	838	348	4,523	2,637	5,361	2,985	56%

It seems to be primarily relatives and neighbors who take responsibility for reporting of child abuse and neglect cases. A sample of cases from the central registry in 1971 indicates the following sources of reports:

Source	Percentage of Reports Received
Relatives	33.0%
Neighbors	17.3%
Law enforcement officers	8.6%
School or child-care facility	7.0%
Hospitals or clinics	2.8%
Medical doctors	1.2%

Reported cases from Guilford County for the calendar year 1972 indicated the following sources of reports:

Source	Percentage of Reports Received
Relatives	25.2%
Neighbors	19.1%
Law enforcement officers	15.3%
Hospitals, clinics and physicians	3.8%

Fifty-nine children died in North Carolina due to abuse or neglect from parents or other caretakers between July 1971 and December 31, 1973. The causes of these deaths during this 2½-year period are as follows:

Period	Deaths from Child Abuse	Deaths from Neglect	Total Deaths
7/1/71 – 6/30/72	25	3	28
7/1/72 – 6/30/73	10	13	23
7/1/73 – 12/31/73	4	4	8

Newspaper clippings reviewed in the Division of Social Services, Department of Human Resources, indicate that a number of parents or caretakers have been criminally prosecuted, and some have been convicted during this period. While the data on criminal prosecutions and convictions are not complete, six parents or caretakers were convicted of murder or manslaughter; one of these cases involved a parent convicted of first-degree murder for arsenic poisoning. Several cases involved fatal beatings, often of small children or infants, by parents or caretakers.[5]

Chapter 5

Notes

1. For background information on child abuse, *see* generally Thomas, *Child Abuse and Neglect, Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 **N.C. L. Rev.** 293 (1972).

2. N.C. Sess. Laws, 1965, c. 472, s. 1.

3. *See* former **N.C. Gen. Stat.** § 14-318.2, repealed in 1971.

4. **N.C. Gen. Stat.** §§ 110-115 through -122.

5. Source, Children's Services Branch, Division of Social Services, Department of Human Resources, State of North Carolina.

Appendix I

SELECTED GENERAL STATUTES RELATING TO CHILDREN IN NORTH CAROLINA

ARTICLE 23.

Jurisdiction and Procedure Applicable to Children.

§ 7A-277. Purpose.—The purpose of this Article is to provide procedures and resources for children within the juvenile jurisdiction of the district court which are different in purpose and philosophy from the procedures applicable to criminal cases involving adults. These procedures are intended to provide a simple judicial process to provide such protection, treatment, rehabilitation or correction as may be appropriate in relation to the needs of each child subject to juvenile jurisdiction and the best interest of the State. The intent of this Article is to assure that, where possible, the court will arrange for the available community resources to be utilized to strengthen the child's family relationships in order to avoid removal of the child from his own home or community. Therefore, this Article should be interpreted as remedial in its purposes to the end that any child subject to the procedures applicable to children in the district court will be benefitted through the exercise of the court's juvenile jurisdiction. (1969, c. 911, s. 2; 1973, c. 270.)

§ 7A-278. Definitions. — The terms or phrases used in this Article shall be defined as follows, unless the context or subject matter otherwise requires:

(1) "Child" is any person who has not reached his eighteenth birthday and is not married, emancipated, or a member of the armed services of the United States: Provided that, for the purposes of subdivision (2) of this section, "child" is any person who has not reached his sixteenth birthday.

(1973, c. 463; 1975, c. 238.)

(2) "Delinquent child" includes any child who has committed any criminal offense under State law or under an ordinance of local government, including violations of the motor vehicle laws or a child who has violated the conditions of his probation under this article.

(3) "Dependent child" is a child who is in need of placement, special care or treatment because such child has no parent, guardian or custodian to be responsible for his supervision or care, or whose parent, guardian or custodian is unable to provide for his supervision or care.

(4) "Neglected child" is any child who does not receive proper care or supervision or discipline from his parent, guardian, custodian or other person acting as a parent, or who has been abandoned, or who is not provided necessary medical care or other remedial care recognized under State law, or who lives in an environment injurious to his welfare, or who has been placed for care or adoption in violation of law.

(5) "Undisciplined child" includes any child who is unlawfully absent from school, or who is regularly disobedient to his parents or guardian or custodian and beyond their disciplinary control, or who is regularly found in places where it is unlawful for a child to be, or who has run away from home.

(6) "Court" means the district court division of the General Court of Justice, except as otherwise specified.

(7) "Custodian" is a person or agency that has been awarded legal custody of a child by a court, or a person other than parents or legal guardian who stands in loco parentis to a child. (1969, c. 911, s. 2.)

§ 7A-279. **Juvenile jurisdiction.** — The court shall have exclusive, original jurisdiction over any case involving a child who resides in or is found in the district and who is alleged to be delinquent, undisciplined, dependent or neglected, or who comes within the provisions of the Interstate Compact on Juveniles, except as otherwise provided. This jurisdiction shall be exercised solely by the district judge. The court shall also have jurisdiction to conduct a juvenile hearing to determine whether a child under aftercare supervision of a court counselor in the district has violated the terms of the conditional release under which such child was released from an institution or training school or other youth services program by the Department of Human Resources. (1965, c. 310, s. 1; 1969, c. 911, s. 2; 1975, c. 742, s. 2.)

§ 7A-280. **Felony cases.**—If a child who has reached his fourteenth birthday is alleged to have committed an offense which constitutes a felony, the judge shall conduct a preliminary hearing to determine probable cause after notice to the parties as provided by this article. Such hearing shall provide due process of law and fair treatment to the child, including the right to counsel, privately retained or at State expense if indigent.

If the judge finds probable cause, he may proceed to hear the case under the procedures established by this article, or if the judge finds that the needs of the child or the best interest of the State will be served, the judge may transfer the case to the superior court division for trial as in the case of adults. The child's attorney shall have a right to examine any court or probation records considered by the court in exercising its discretion to transfer the case, and the order of transfer shall specify the reasons for transfer.

If the alleged felony constitutes a capital offense and the judge finds probable cause, the judge shall transfer the case to the superior court division for trial as in the case of adults.

In case of transfer of any case to the superior court division under this section, the judge may order that the child be detained in a juvenile detention home or separate section of a local jail as provided by G.S. 110-24, pending trial in the superior court division. (1919, c. 97, s. 9; C. S., s. 5047; 1929, c. 84; 1957, c. 100, s. 1; 1963, c. 631; 1969, c. 911, s. 2.)

§ **7A-281. Petition.**—Any person having knowledge or information that a case has arisen which invokes the juvenile jurisdiction established by this Article may file a verified petition with the clerk of superior court. The petition shall contain the name, age and address of the child, the name and last known address of his parents or guardian or custodian, and shall allege the facts which invoke the juvenile jurisdiction of the court.

When the office of the clerk of superior court is closed, a magistrate or other court official or officials may be authorized by the chief judge of the district court to issue juvenile petitions when requested by a juvenile probation officer, a representative of the county department of social services or a law-enforcement officer. Such authority is limited to emergency situations such as cases where a petition is required in order to detain a child after hours. Any juvenile petition so issued shall be delivered to the office of the clerk of superior court for customary processing as soon as said office is open for business.

After a petition is filed, any judge exercising juvenile jurisdiction may arrange for evaluation of juvenile cases through the county director of social services or the chief family counselor or such other personnel as may be available to the court. The purpose of this procedure is to use available community resources for the diagnosis or treatment or protection of a child in cases where it is in the best interest of the child or the community to adjust the matter without a formal hearing. (1919, c. 97, s. 5; C. S. s. 5043; 1969, c. 911, s. 2; 1973, c. 269.)

§ **7A-282. Issuance of summons.**—After a petition is filed and when directed by the court, the clerk of superior court shall cause a summons to be issued directed to the parents or guardian or custodian and to the child, requiring them to appear for a hearing at the time and place stated in the summons. (1919, c. 97, s. 6; C. S., s. 5044; 1939, c. 50; 1969, c. 911, s. 2.)

§ **7A-283. Service of summons and petition.**—The summons and a copy of the petition shall be served upon the parents or either of them or the guardian or custodian, and the child, not less than five days prior to the date scheduled for the hearing, provided that the time provided herein may be waived in the discretion of the judge in the best interest of the child. Service of the summons and petition shall be made personally by leaving a copy of the summons and the petition with the person summoned. If personal service upon a parent is attempted at his last known address but such parent cannot be located, and there is no parent, guardian or custodian available to appear with the child for the hearing, the court shall appoint a guardian ad litem or a guardian of the person to appear with the child.

If the court finds it is impractical to obtain personal service upon the parents, guardian or custodian, the judge may authorize service of summons and petition by mail or by publication, provided that a guardian or custodian shall appear with the child for the hearing if neither parent is present.

If the parent, guardian or custodian is personally served as herein provided and fails without reasonable cause to appear and to bring the child, he may be proceeded against as for contempt of court. (1919, c. 97, s. 8; C. S., s. 5046; 1969, c. 911, s. 2.)

§ **7A-284. Immediate custody of a child.**—If it appears from a petition that a child is in danger, or subject to such serious neglect as may endanger his health or morals, or that the best interest of the child requires that the court as-

sume immediate custody of the child prior to a hearing on the merits of the case, the judge may enter an order directing an officer or other authorized person to assume immediate custody of the child. Such an order shall constitute authority to assume physical custody of the child and to take the child to such place or person as is designated in the order. The court shall conduct a hearing on the merits at the earliest practicable time within five days after assuming custody, and if such a hearing is not held within five days, the child shall be released. (1919, c. 97, s. 7; C. S., s. 5045; 1969, c. 911, s. 2.)

§ 7A-285. **Juvenile hearing.** — Juvenile hearings shall be held in each county in the district at such times and places as the chief district judge shall designate. The general public may be excluded from any juvenile hearing in the discretion of the judge. Reporting of juvenile cases shall be as provided by G.S. 7A-198 for reporting of civil trials.

The juvenile hearing shall be a simple judicial process designed to adjudicate the existence or nonexistence of any of the conditions defined by G.S. 7A-278(2) through (5) which have been alleged to exist, and to make an appropriate disposition to achieve the purposes of this Article. In the adjudication part of the hearing, the judge shall find the facts and shall protect the rights of the child and his parents in order to assure due process of law, including the right to written notice of the facts alleged in the petition, the right to counsel, the right to confront and cross-examine witnesses, and the privilege against self-incrimination. In cases where the petition alleges that a child is delinquent or undisciplined and where the child may be committed to a State institution, the child shall have a right to assigned counsel as provided by law in cases of indigency.

The court may continue any case from time to time to allow additional factual evidence, social information or other information needed in the best interest of the child. If the court finds that the conditions alleged do not exist, or that the child is not in need of the care, protection or discipline of the State, the petition shall be dismissed.

At the conclusion of the adjudicatory part of the hearing, the court may proceed to the disposition part of the hearing, or the court may continue the case for disposition after the juvenile probation officer or family counselor or other personnel available to the court has secured such social, medical, psychiatric, psychological or other information as may be needed for the court to develop a disposition related to the needs of the child or in the best interest of the State. The disposition part of the hearing may be informal, and the court may consider written reports or other evidence concerning the needs of the child.

The child or his parents, guardian or custodian shall have an opportunity to present evidence if they desire to do so, or they may advise the court concerning the disposition which they believe to be in the best interest of the child.

In all cases, the court order shall be in writing and shall contain appropriate findings of fact and conclusions of law. In any juvenile hearing dealing with the revocation of conditional release, the court shall protect the due process rights of the child which shall include the same rights guaranteed in adjudication of delinquency where the child could lose his freedom. (1919, c. 97, s. 9; C. S., s. 5047; 1929, c. 84; 1957, c. 100, s. 1; 1963, c. 631; 1969, c. 911, s. 2; 1975, c. 742, s. 3.)

§ 7A-286. **Disposition.** — The judge shall select the disposition which provides for the protection, treatment, rehabilitation or correction of the child after considering the factual evidence, the needs of the child, and the available

resources, as may be appropriate in each case. In cases where the court finds a factual basis for an adjudication that a child is delinquent, undisciplined, dependent or neglected, the court may find it is in the best interest of the child to postpone adjudication or disposition of the case for a specified time or subject to certain conditions.

In any case where the court adjudicates the child to be delinquent, undisciplined, dependent or neglected, the jurisdiction of the court to modify any order of disposition made in the case shall continue during the minority of the child or until terminated by order of the court, except as otherwise provided herein, provided that any child subject to the juvenile jurisdiction of the court shall be subject to prosecution in any court for any offense committed after his sixteenth birthday.

Any adjudication or disposition of a juvenile hearing shall not have the effect of forfeiting any of the child's citizenship rights.

The court shall have a duty to give each child subject to juvenile jurisdiction such attention and supervision as will achieve the purposes of this Article. Upon motion in the cause or petition, and after notice as provided in this Article, the court may conduct a review hearing to determine whether the order of the court is in the best interest of the child, and the court may modify or vacate the order in light of changes in circumstances or the needs of the child.

The following alternatives for disposition shall be available to any judge exercising juvenile jurisdiction, and the judge may combine any two of the applicable alternatives when he finds such disposition to be in the best interest of the child:

(1) The judge may dismiss the case, or continue the case in order to allow the child, parents or others to take appropriate action.

(2) In the case of any child who needs more adequate care or supervision, or who needs placement, the court may:

a. Require that the child be supervised in his own home by the county department of social services, juvenile probation officer, family counselor or such other personnel as may be available to the court, subject to such conditions applicable to the parents or the child as the court may specify; or

b. Place the child in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or

c. Place the child in the custody of the county department of social services in the county of his residence, or in the case of a child who has legal residence outside the State, in the temporary custody of the county department of social services in the county where the child is found so that said agency may return the child to the responsible authorities. Any county department of social services in whose custody or temporary custody a child is placed shall have the authority to arrange for and provide medical care as needed for such child.

In any case where the court removes custody from a parent or other person standing in loco parentis, the court order shall include provision for such support of the child by the parents or other responsible parties as may be reasonable under the circumstances, and the court may order any parent who appears in court with such child to pay such support, or after notice to the parent as provided by this Article, the court may hold a hearing and order the parent to pay such support. If the court places a child in the custody of a county department of social services and if the court finds that the parents or other responsible parties are

unable to pay the cost of the support, maintenance, medical or dental care required by the child, such cost shall be paid by the county department of social services in whose custody the child is placed, provided the child is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

(3) In the case of any child who is alleged to be delinquent or undisciplined and where the court finds it necessary that such child be detained in secure custody for the protection of the community or in the best interest of the child before or after a hearing on the merits of the case, the court may order that such child be detained in a juvenile detention home as provided in G.S. 110-24, or if no juvenile detention home is available, in a separate section of a local jail which meets the requirements of G.S. 110-24, provided the court shall notify the parent, guardian or custodian of the child of such detention. In order to provide authority for approval of detention care when the district court is not in session, the chief district judge or the district judge having primary responsibility for hearing juvenile cases in the district may delegate the court's authority to detain by administrative order which shall be filed in the office of the clerk of superior court. Such administrative order shall specify which judicial officials shall be contacted for approval of detention care in the following order: any available district judge; the chief juvenile probation officer or any juvenile probation officer; or the clerk or assistant clerk of superior court. No child shall be held in any juvenile detention home or jail for more than five calendar days without a hearing to determine the need for continued detention under the special procedures established by this Article. If the judge orders that the child continue in the detention home or jail after such a hearing to determine the need for continued detention, the court order shall be in writing with appropriate findings of fact.

(4) In the case of any child who is delinquent or undisciplined, the court shall consider the following summary of State policy in relation to such child in order to design an appropriate disposition to meet the needs of the child and to achieve the objectives of the State in exercising these two categories of juvenile jurisdiction: The initial approach should involve working with the child in his own home so that the appropriate primary resources (such as the parents, school and other community services) may be involved in child care, supervision and treatment according to the needs of the child. Thus, the court should arrange for appropriate community-level services to be provided to the child and/or his family in order to strengthen his own home, such as juvenile probation services, mental health services, educational services, social services and others as may be appropriate. In cases where it is necessary to place a delinquent child outside his own home, first consideration should be given to residential resources in the child's own community, such as a relative's home, a foster home, small group homes, halfway houses, group child care, and others as may be available. A child should not be committed to training school or to any other institution solely for unlawful absence from school; such a child should generally be helped through community-level resources. A commitment to training school or to any State institution is generally appropriate only for a child over 10 years of age whose offense would be a crime if committed by an adult and where the child's behavior constitutes some threat to the safety of persons or property in the community so that the child needs to be removed from the community for the protection of the community. After considering these policy objectives, the court may:

a. Continue the case in order to allow the family an opportunity to meet the needs of the child through more adequate supervision or placement in a private or specialized school, or placement with a relative, or through some other plan approved by the court;

b. Place the child on probation for whatever period of time the court may specify, and subject to such conditions of probation as the court finds are related to the needs of the child and which the court shall specify, under the supervision of the juvenile probation officer;

c. Excuse the child from compliance with the compulsory school attendance law, provided the court finds that suitable alternative plans can be arranged by the family or through other community resources for one of the following: an education related to the needs or abilities of the child, such as (but not limited to) vocational education or special education; a suitable plan of supervision or placement; or some other plan that the court finds to be in the best interest of the child.

(5) In the case of a child who is delinquent, the court may commit the child to the Department of Correction, for placement in one of the residential programs operated by the Department, provided the court finds that such child meets each of the following four criteria for commitment to an institution and supports such finding with appropriate findings of fact in the order of commitment as follows:

a. The child has not or would not adjust in his own home on probation or while other services are being provided;

b. Community-based residential care has already been utilized or would not be successful or is not available;

c. The child's behavior constitutes some threat to persons or property in the community or to the child's own safety or personal welfare.

d. If the child is less than 10 years of age or his offense would not be a crime if committed by an adult, the court must find that all community-level alternatives for services and residential care have been exhausted.

Said commitment shall be for a definite term or an indefinite term, not to extend beyond the eighteenth birthday of the child, as the Department or its administrative personnel may find to be in the best interest of the child. The Department, or its administrative personnel, shall have final authority to determine when any child who has been admitted to any program operated by the Department has sufficiently benefited from the program as to be ready for release. If the Department finds that any child committed to its care is not suitable for any program operated by the Department, the Department shall have the right to make a motion in the cause so that the court may enter an alternative disposition.

(6) In any case, the court may order that the child be examined by a physician, psychiatrist, psychologist or other professional person as may be needed for the court to determine the needs of the child. If the court finds the child to be in need of medical, surgical, psychiatric, psychological or other treatment, the court may allow the parents or other responsible persons to arrange for such care. If the parents decline or are unable to make such arrangements, the court may order the needed treatment, surgery or other needed care, and the court may order the parents or other responsible parties to pay the cost of such

care, or if the court finds the parents are unable to pay the cost of such care, such cost shall be a charge upon the county when approved by the court. If the court believes, or if there is evidence presented to the effect that the child is mentally ill or is mentally retarded the court shall refer the child to the area mental health director or local mental health director for appropriate action. In no case will a child be committed directly to a State hospital or mental retardation center. The area mental health director or local mental health director shall be responsible for arranging an interdisciplinary evaluation of the child and mobilizing resources to meet the child's needs. If institutionalization is determined to be the best service for the child, then admission shall be with the voluntary consent of the parent or guardian; provided, that the consent of the parent or guardian shall not be required in those cases wherein the alternative to admission to a State hospital or mental retardation center is the commitment of the child to a juvenile corrections facility.

(7) In any case where there is no parent to appear in a hearing with the child or where the court finds it would be in the best interest of the child, the court may appoint a guardian of the person for the child, who shall operate under the supervision of the court with or without bond, and who shall file only such reports as the court shall require. Such guardian of the person shall have the care, custody and control of the child or may arrange a suitable placement for the child, and may represent the child in legal actions before any court. Such guardian of the person shall also have authority to consent to certain actions on the part of the child in place of the parents, including but not limited to marriage, enlisting in the armed forces, major surgery, or such other actions as the court shall designate where parental consent is required. The authority of the guardian of the person shall continue for whatever period of time the court shall designate during the minority of the child. (1919, c. 97, s. 9; C. S., s. 5047; 1929, c. 84; 1957, c. 100, s. 1; 1963, c. 631; 1969, c. 911, s. 2; 1971, c. 432, ss. 1, 2; c. 967; c. 1180, ss. 1-4; 1973, cc. 674, 1157; c. 1262, s. 10; 1975, c. 19, s. 3.)

§ 7A-286.1. **Conditional release revocation hearings.** — The district court having jurisdiction over a juvenile on conditional release from a Department of Human Resources institution or agency shall hold a conditional release revocation hearing upon motion for review from the juvenile's court counselor or the Secretary of the Department of Human Resources or his designee. If the district court finds that the juvenile has violated the terms of his conditional release the court may revoke said conditional release or make any other disposition that the court feels to be in the best interest of the child.

With respect to any hearing pursuant to this Article, the juvenile:

(1) Shall have reasonable notice in writing of the nature and content of the allegations in the petition, including notice that the purpose of the hearing is to determine whether the juvenile has violated the terms of his conditional release to the extent that his conditional release should be revoked.

(2) Shall be permitted to be represented by legal counsel at the hearing. If the juvenile shall be found to be indigent, the provisions of G.S. 7A-450 will apply.

(3) Shall have the right to confront and cross-examine any persons who have made allegations against him, unless the court determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits or other evidence, in support of his contentions. A record of the proceeding shall be made and preserved in the child's juvenile record. (1975, c. 793.)

§ 7A-287. Juvenile records.—The court shall maintain a complete record of all juvenile cases to be known as the juvenile record, which shall be withheld from public inspection and may be examined only by order of the judge, except that the child, his parents, guardian, custodian and attorney, or other authorized representative of the child shall have a right to examine the child's juvenile record.

The juvenile record may be divided into two parts, social and legal:

(1) The social part of the juvenile record may include family background information or reports of social, medical, psychiatric, psychological or other information concerning a child or his family, or a record of the probation reports of a child or interviews with his family, or other information which the judge finds should be protected from public inspection in the best interest of the child. The social part of the juvenile record may be filed separate from other records of the court under rule of the Administrative Office of the Courts.

(2) The legal part of the record includes the summons, petition, court order, written motions, the transcript of the hearing and other papers filed in the proceeding.

An adjudication that a child is delinquent or undisciplined shall not disqualify the child for public office nor be considered as conviction of any criminal offense. (1919, c. 97, s. 4; C. S., s. 5042; 1969, c. 911, s. 2.)

§ 7A-288. Termination of parental rights.—In cases where the court has adjudicated a child to be neglected or dependent, the court shall have authority to enter an order which terminates the parental rights with respect to such child if the court finds any one of the following:

(1) That the parent has abandoned the child for six consecutive months prior to the special hearing in which termination of parental rights is considered or that a child is an abandoned child as defined by chapter 48 of the General Statutes entitled "Adoption of Minors."

(2) That a child born out of wedlock is living under such conditions that the health or general welfare of the child is endangered by the living conditions and environment, pursuant to the procedure established by G.S. 130-58.1 and as specified by G.S. 48-6.1; or

(3) That the parent has willfully failed to contribute adequate financial support to a child placed in the custody of an agency or child-care institution, or living in a foster home or with a relative, for a period of six months; or

(4) That the parent has so physically abused or seriously neglected the child that it would be in the best interest of the child that he not be returned to such parent.

The court shall conduct a special hearing to consider any case involving termination of parental rights. There shall be a petition requesting such termination and alleging facts which would justify termination as herein provided. The parent shall be notified in advance of such special hearing by personal service of the summons and petition as provided in this article or under the procedures established by Rule 4 of the Rules of Civil Procedure of chapter 1A of the North

Carolina General Statutes. Before entering an order of termination of parental rights, the court shall consider all available facts and social information concerning the child to evaluate whether the parent may reestablish a suitable home for the child, for the policy of law is to preserve natural family ties where possible in the best interest of the child.

Such an order terminates all rights and obligations of the parent to the child and of the child to the parent, arising from the parental relationship. Such a parent is not thereafter entitled to notice of proceedings for the adoption of the child and has no right to object thereto or otherwise participate therein.

In such cases, the court shall place the child by written order in the custody of the county department of social services or a licensed child-placing agency, and such custodian shall have the right to make such placement plans for the child as it finds to be in his best interest. Such county department of social services or licensed child-placing agency shall further have the authority to consent to the adoption of the child, to its marriage, to its enlistment in the armed forces of the United States, and to surgical and other medical treatment of the child. (1969, c. 911, s. 2.)

§ 7A-289. Appeals; modification of order after affirmation. — Any child, parent, guardian, custodian or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after the hearing. Pending disposition of an appeal, the court may enter such temporary order affecting the custody or placement of the child as the court finds to be in the best interest of the child or the best interest of the State. Upon the affirmation of the order of adjudication or disposition of the district court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of such an appeal, the district court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interest of the child to reflect any adjustment made by the child or change in circumstances during the period of time the case on appeal was pending, provided that if such modifying order be entered ex parte, the Court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why said modifying order should be vacated or altered. (1919, c. 97, s. 20; C. S., s. 5058; 1949, c. 976; 1969, c. 911, s. 2; 1973, c. 722.)

ARTICLE 24.

Juvenile Services.

§ 7A-289.1. Purpose. — The purpose of this Article is to provide for a statewide and uniform system of juvenile probation and aftercare which provides adequate and appropriate services to certain children who are found to be within the juvenile jurisdiction of the district court and to authorize an intake process for diversion of selected juvenile offenders from the juvenile justice system. (1973, c. 1339, s. 1.)

§ 7A-289.2. Definitions. — The terms or phrases used in this Article shall be defined according to the definitions contained in G.S. 7A-278 and as follows, unless the context or subject matter otherwise requires:

(1) "Administrator" is the Administrator for Juvenile Services in the Administrative Office of the Courts who is responsible for planning, organizing and administering a statewide system of juvenile probation and aftercare services as authorized by this Article.

(2) "Aftercare" means the legal status of a child who has been committed by the court to the Department of Correction for placement by said agency in one or more of its institutions or programs and who is being granted conditional release to return to the community as authorized by G.S. 134-17.

(3) "Chief court counselor" is the professional person responsible for administration and supervision of juvenile probation and aftercare in each judicial district under the supervision of the court and the Administrator for Juvenile Services.

(4) "Court counselor" is a professional person responsible for juvenile probation and aftercare services to children on probation or on conditional release from the Office of Youth Development, Department of Social Rehabilitation and Control under the supervision of the chief court counselor.

(5) "Director" is the Director of the Administrative Office of the Courts.

§ 7A-289.3. **Division of Juvenile Services.** — A Division of Juvenile Services is hereby created within the Administrative Office of the Courts to be responsible for administration of a statewide and uniform system of juvenile probation and aftercare services in all judicial districts of the State. The administrative head of the Division shall be the Administrator for Juvenile Services who shall be appointed by the Director. The Administrator shall be responsible for planning, organizing and administering juvenile probation and aftercare services on a statewide basis to the end that juvenile services will be uniform throughout the State and of sufficient quality to meet the needs of the children under supervision.

§ 7A-289.4. **Duties and Powers of Administrator.** — The Administrator shall have the following powers and duties under the supervision of the Director:

(1) To plan for a statewide program of juvenile probation and aftercare services;

(2) To appoint such personnel within the Administrative Office of the Courts as may be necessary to administer a statewide and uniform system of juvenile probation and aftercare;

(3) To appoint the chief court counselor in each judicial district with the approval of the chief district judge and the Director;

(4) To study the various issues related to qualifications, salary ranges, appointment of personnel on a merit basis (including chief court counselors, court counselors, secretaries and other appropriate personnel) at the State and district levels in order to recommend appropriate policies and procedures governing personnel to the Director who may adopt such personnel policies as he finds to be in the best interest of the juvenile services program;

(5) To develop a statewide plan for staff development and training so that chief court counselors, court counselors and other personnel responsible for juvenile services may be appropriately trained and qualified; such plan may include attendance at appropriate professional meetings and opportunities for educational leave for academic study;

(6) To develop, promulgate and enforce such policies, procedures, rules and regulations as he may find necessary and appropriate to implement a statewide and uniform program of juvenile probation and aftercare services.

§ 7A-289.5. **Duties and Powers of Chief Court Counselors.** – The chief court counselor in each judicial district who is appointed as provided by this Article shall have the following powers and duties:

(1) To appoint such court counselors, secretaries and other personnel as may be authorized by the Administrative Office of the Courts with the approval of the Administrator in accordance with the personnel policies adopted by the Director;

(2) To supervise and direct the program of juvenile probation and aftercare services within the district under the supervision of the court and the Administrator according to the statewide practices and procedures promulgated by the Administrator;

(3) To provide inservice training for staff as required by the Administrator;

(4) To keep such records and make such reports as may be requested by the Administrator in order to provide statewide data and information about juvenile needs and services.

§ 7A-289.6. **Duties and Powers of Court Counselors.** The court counselors in each district shall have the duties and powers of juvenile probation officers as provided by G.S. 110-23 and as follows:

(1) To conduct a pre-hearing social study of any child alleged to be delinquent or undisciplined if so instructed by the court; provided that no social study shall be made prior to an adjudication that the child is within the juvenile jurisdiction of the court unless the child and his parent or attorney or guardian or custodian files a written statement with the court counselor declaring the child's intention to admit the allegations contained in the juvenile petition and giving consent to such pre-hearing social study; when such a pre-hearing social study has been completed, the court counselor shall prepare a written report for the court summarizing the findings which may be reviewed by the court prior to the juvenile hearing and which shall contain recommendations as to the type of care and/or treatment needed by the child and which shall be in the form developed by the Administrator for such reports;

(2) To assist the court in handling cases where a child alleged or adjudicated delinquent or undisciplined needs detention care prior to the juvenile hearing, or after a hearing to determine the need for detention, or pending admission of the child to an institution or other residential program as authorized by G.S. 7A-286(3);

(3) To bring any child on probation to the attention of the court for review and termination when the child's period of probation is ended as provided by G.S. 110-22; the counselor may also recommend termination of probation prior to the end of the child's period of probation when such a recommendation is merited by the progress and adjustment of the child;

(4) To assist the court as requested in matters related to children within the juvenile jurisdiction of the court as undisciplined, dependent or neglected or within the Interstate Compact on Juveniles. This provision shall not be construed, however, to deprive the Department of Social Services of the functions assigned to it by law in the area of dependent or neglected children.

§ 7A-289.7. **Intake Authorized.** The chief court counselor in each judicial district may establish intake services within his office under the supervision of the Administrator. If intake services are established by the chief court counselor, such services shall be organized as follows:

(1) All complaints concerning any child alleged to be within the juvenile jurisdiction of the court as undisciplined or delinquent shall be received by personnel designated by the chief court counselor as responsible for intake services. The personnel so assigned shall conduct a preliminary inquiry to determine whether it is in the best interest of the child or the State that a juvenile petition be filed. Such preliminary inquiry may be carried on over a period of 15 days after receipt of the complaint, but the inquiry shall be completed within said 15 days. The personnel conducting such inquiry may hold conferences with the child, his family, the school and other appropriate community resources to adjust the case so that filing a petition will not be necessary.

(2) If the intake personnel determine that a petition should be filed, the complainant should be notified and assisted with the filing of a juvenile petition with the clerk of superior court.

(3) If it is determined that a petition should not be filed, the intake personnel shall notify the complainant of this decision and of the complainant's right to have such decision reviewed by a judge of the court. Such intake personnel may refer the case to an appropriate public or private agency with notice to the complainant after which the intake file may be closed, subject to judicial review. (1974, c. 1339.)

ARTICLE 24A.

Delinquency Prevention and Youth Services.

§ 7A-289.13. Legislative intent. — The General Assembly hereby declares its intent to reduce the number of children committed by the courts for delinquency to institutions operated by the Division of Youth Development, Department of Human Resources or other State agencies. The primary intent of this Article is to provide a comprehensive plan for the development of community-based alternatives to training school commitment so that "status offenders" (defined by this Article to include "those juveniles guilty of offenses which would not be violations of the law if committed by an adult") may be eliminated from the youth development institutions of this State. Additionally it is the intent of this legislation to provide noninstitutional disposition options in any case before the juvenile court where such disposition is deemed to be in the best interest of the child and the community.

The policy and intent of the General Assembly in delinquency prevention and community-based services can be summarized as follows:

(1) Such programs should be planned and organized at the community level within the State, and such planning efforts should include appropriate representation from local government, local agencies serving families and children (both public and private), local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The role of the State should be to provide technical assistance, access to funding, program information, and to assist local leadership in appropriate planning.

(2) When a child is adjudicated to be within the juvenile jurisdiction of the district court such child should be carefully evaluated through the available community-level resources (including mental health, social services, public health and other available medical services, public schools, and others as appropriate) prior to the juvenile hearing dealing with disposition so that the disposition of the court may be made with an understanding of the needs of the child and after consideration of the resources available to meet these needs.

(3) It is contrary to the policy of the State for a court to separate a child from his own family or commit a child to an institution or training school without a careful evaluation of the needs of the child.

(4) The General Assembly finds that State and local government should be responsive to the need for community-based services which would provide a viable alternative to commitment to an institution or training school. The General Assembly intends that State government should be responsive to this need through the Department of Human Resources by helping public and private local groups to plan, develop and fund community-based programs, both residential and nonresidential. It is recognized that such efforts will require the cooperation of several major State departments in addition to Human

Resources, such as Public Instruction, Administrative Office of the Courts, and the Governor's Committee on Law and Order.

(5) It is the intent of the General Assembly that the Secretary of the Department of Human Resources in conjunction with the Technical Advisory Committee described in G.S. 143B-207 of this Article develop a funding mechanism that will provide State support for programs that meet the standards as developed under the provisions of this Article. (1975, c. 929.)

§ 7A-289.14. Duties of Secretary of Human Resources. — It shall be the duty of the Secretary of Human Resources to arrange for the appropriate unit or units of the Department of Human Resources to implement this Article as follows:

(1) To designate the appropriate unit of the Department of Human Resources to be responsible for coordination of state-level services in relation to delinquency prevention and youth services so that any citizen may go to one place in State government to receive services or access to services.

(2) To provide staff services to the Technical Advisory Committee on Delinquency Prevention and Youth Services created by this Article;

(3) To arrange appropriate coordination and planning within the child-serving agencies of the Department of Human Resources and promote inter-departmental coordination by regular interaction with the Technical Advisory Committee.

(4) To assist local governments and private service agencies in the development of community-based programs, and to provide information on the availability of potential funding sources and whatever assistance may be requested in making application for needed funding.

(5) To approve yearly program evaluations and to make recommendations to the General Assembly concerning continuation funding that might be supported by that evaluation.

(6) To approve program evaluation standards by which all programs developed under the provisions of this Article may be objectively evaluated.

Such standards as may be developed for the purpose of program evaluation shall be in addition to any current standards as may be applicable under the existing authority of the Social Services Commission and the Department of Human Resources.

Minimum operating standards as well as program evaluation standards as may be needed for new program models designed to fulfill the intent of this Article, may be developed at the discretion of the Secretary either by the Social Services Commission or the Technical Advisory Committee.

(7) To develop in coordination with the Technical Advisory Committee as described in G.S. 143B-207 of this Article a formula for funding on a matching basis community-based services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under the provisions of this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of youth needs with the Department of Human Resources as provided in G.S. 7A-289.16 of this Article. (1975, c. 929.)

§ 7A-289.15. Purchase of care or services from programs meeting State standards. — The Department of Human Resources and any other appropriate State or local agency are hereby authorized to purchase care or services from public or private agencies providing delinquency prevention programs or community-based services, provided the program meets the State standards as authorized by G.S. 7A-289.14. As institutional populations are reduced, the Department of Human Resources may divert State funds appropriated for institutional programs to purchase such services, pursuant to the provisions of the Executive Budget Act.

The Technical Advisory Committee shall prepare an annual report on the progress of the community-based programs of this State which shall include the most current institutional populations of children being served by the various departments of State government which shall include comparative costs of all child-serving agencies. Such report shall be submitted to the Governor, the General Assembly and the various State departments providing services to children. (1975, c. 929.)

§ 7A-289.16. County assessment of youth needs. — The board of county commissioners of each participating county shall conduct or arrange for a study of youth needs in the county, giving particular attention to the need for delinquency prevention programs and community-based services (residential or nonresidential) which would provide an alternative to commitment to training school. The board of county commissioners may delegate the responsibility to any appropriate board or department of county government, or it may contract with an appropriate private agency or group for the study. Adjoining counties may cooperate in conducting such study on a regional basis, utilizing appropriate public or private resources.

The board of county commissioners of any county may request technical assistance from the Secretary of Human Resources in conducting such study. Each participating county shall develop a study plan for submission to the Secretary of Human Resources by January 1, 1976. Each participating county shall file a report of preliminary findings from such study to the Secretary of Human Resources by January 1, 1977, and its full report by January 1, 1978. Each participating county shall plan for a continuing assessment of youth needs in the county or region with annual reports to the Secretary of Human Resources. (1975, c. 929.)

Article 2.

Juvenile Services

§ 110-21: Repealed by Session Laws 1974, c. 1339, s. 2.

§ 110-21.1: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-22. Probation conditions; revocation.—When the court places any child on probation, the court order shall specify the conditions of probation and the period of time the child shall remain on probation. The conditions of probation shall be designed by the court to meet the needs of the child and may include any of the following or such other conditions of probation as the court may order in the best interest of the child:

(1) That the child shall remain on good behavior and not violate any laws;

(2) That the child attend school regularly;

(3) That the child not associate with specified persons or be in specified places;

(4) That the child report to the probation officer as often as required by the probation officer;

(5) That the child make specified financial restitution or pay a fine;

(6) That the child be employed regularly if not attending school.

The court may review the progress of any child on probation at any time during the period of probation. The conditions of probation or the period of time on probation may be modified as may be appropriate in a particular case, provided there is notice and a hearing as provided by Article 23 of Chapter 7A. If a child violates the conditions of his probation, such child, after notice, may be required to appear before the court, and the court may make any disposition of the matter authorized by G.S. 7A-286. At the end of a child's period of probation, the child shall appear after notice of a hearing with the juvenile probation officer so that the court may evaluate the child's need for continued supervision, and the judge may terminate the probation, continue the child on probation under the same or modified conditions for a specified term, or enter such other order as the court may find to be in the best interest of the child. (1919, c. 97, s. 12; C. S., s. 5050; 1969, c. 911, s. 1; 1971, c. 1180, s. 6.)

Editor's Note. — The 1971 amendment, effective Sept. 1, 1971, in the third sentence of the second paragraph, inserted "after notice" before "may be required," deleted "after notice" following "before the court," and substituted "authorized by G.S. 7A-286" for "that it might have made when the child was placed on probation."

§ 110-22.1: Repealed by Session Laws 1969, c. 911, s. 1.

§ 110-23. Duties and powers of juvenile probation officers.—All juvenile probation officers or family counselors providing services to judges hearing juvenile cases shall have the following powers and duties, as the court may require:

(1) To secure or arrange for such information concerning a case as the court may require before, during or after the hearing;

(2) To prepare written reports for the use of the court;

(3) To appear and testify at court hearings;

(4) To assume temporary custody of a child when so directed by court order;

(5) To furnish each child on probation and his parents with a written statement of his conditions of probation, and to consult with the parents, guardian or custodian so that they may help the child comply with his probation;

(6) To keep informed concerning the conduct and progress of any child on probation or under court supervision through home visits or conferences with the parents, guardian or custodian, and in other ways;

(7) To see that the conditions of probation are complied with by the child, or to bring any child who violates his probation to the attention of the court;

(8) To make periodic reports to the court concerning the adjustment of any child on probation or under court supervision;

(9) To keep such records of his work as the court may require;

(10) To account for all funds collected from children;

(11) To have all the powers of a peace officer in the district;

(12) To provide supervision for a child transferred to his supervision from another court or another state, and to provide supervision for any child released from an institution operated by the North Carolina Board of Juvenile Correction when requested by such Board to do so;

(13) To have such other duties as the judge may direct. (1919, c. 97, s. 13; C. S., s. 5051; 1957, c. 100, s. 1; 1969, c. 911, s. 1.)

§ 110-23.1. Juvenile probation officers; nongovernmental employees. —Whenever funds are made available for the purposes of this section, the chief district court judge of any district where family counselor services are not available may, in accordance with rules of the administrative offices of the courts, designate persons other than government employees to act as juvenile probation officers and chief juvenile probation officers, and such persons so designated shall have the same powers, duties, and responsibilities as juvenile probation officers and chief juvenile probation officers otherwise provided for by law. (1971, c. 1134.)

§ 110-24. **Requirements for lawful juvenile detention.** — It shall be unlawful for any child coming within the provisions of Article 23 of Chapter 7A to be placed in any jail, prison or other penal institution where such child will come into contact with adults charged with or convicted of crimes, except that a court may detain a child in a jail with a holdover facility for juveniles approved by the Department of Human Resources as meeting the State standards as provided by Part 3, Article 3, Chapter 108 and Article 10, Chapter 153A.

Children who are alleged or adjudicated to be delinquent or undisciplined as defined by Article 23, Chapter 7A, and who require secure custody for the protection of the community or in the best interest of the child may be temporarily detained in a county detention home or a regional detention home as defined by G.S. 134-36 which shall be separate from any jail, lockup, prison, or other adult penal institution. It shall be unlawful for a county or any unit of government to operate a juvenile detention home unless the facility meets the State standards of the Department of Human Resources.

A juvenile detention facility shall be located in a building designed to provide secure custody which meets State standards and shall have such personnel as may be necessary to provide for the supervision and safety of the children being detained. A juvenile detention home shall provide a program for children detained therein which meets the standards of the Department of Human Resources, and such program shall be designed to provide wholesome activities in the best interest of the children placed therein.

ARTICLE 4A.

Interstate Compact on the Placement of Children.

§ 110-57.1. Adoption of compact.—The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as contained in this Article. It is the intent of the General Assembly that Article 4 shall govern interstate placements of children between North Carolina and any other jurisdictions not a party to this compact.

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities of [or] for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

(e) "Appropriate public authorities" as used in Article III shall, with reference to this State, mean the Department of Human Resources and said agency shall receive and act with reference to notices required by Article III.

(f) "Appropriate authority in the receiving state" as used in paragraph (a) of Article V shall, with reference to this State, mean the Secretary of Human Resources.

(g) "Executive head" as used in Article VII means the Governor.

Article III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this Article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.
(2) The identity and address or addresses of the parents or legal guardian.
(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.
(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this Article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations.

This compact shall not apply to: (a) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state. (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal.

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1971, c. 453, s. 1; 1973, c. 476, s. 138.)

§ **110-57.2. Financial responsibility under compact.** — Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of any other state laws fixing responsibility for the support of children also may be invoked. (1971, c. 453, s. 2.)

§ **110-57.3. Agreements under compact.**—The officers and agencies of this State and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this State or subdivision or agency thereof shall not be binding unless it has the approval in writing of the Secretary of Human Resources in the case of the State and of the county director of social services in the case of a county or other subdivision of the State. (1971, c. 453, s. 2; 1973, c. 476, s. 138.)

§ **110-57.4. Visitation, inspection or supervision.**—Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the laws of this State shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children. (1971, c. 453, s. 2.)

§ **110-57.5. Compact to govern between party states.**—The provisions of Article 4 of Chapter 110 of the General Statutes shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children. (1971, c. 453, s. 2.)

§ **110-57.6. Placement of delinquents.**—Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof. (1971, c. 453, s. 2.)

§ **110-57.7. Compact administrator.** — The Governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII. (1971, c. 453, s. 2.)

ARTICLE 5.

Interstate Compact on Juveniles.

§ 110-58. **Execution of compact.**—The Governor is hereby authorized and directed to execute a compact on behalf of this State with any other state or states legally joining therein in the form substantially as follows: The contracting states solemnly agree:

ARTICLE I. FINDINGS AND PURPOSES.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to

(1) Cooperative supervision of delinquent juveniles on probation or parole;
(2) The return, from one state to another, of delinquent juveniles who have escaped or absconded;
(3) The return, from one state to another, of nondelinquent juveniles who have run away from home; and
(4) Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II. EXISTING RIGHTS AND REMEDIES.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III. DEFINITIONS.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV. RETURN OF RUNAWAYS.

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the

petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer to whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or

any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V. RETURN OF ESCAPEES AND ABSCONDERS.

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact,

such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

ARTICLE VI. VOLUNTARY RETURN PROCEDURE.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or Article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII. COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES.

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent

juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII. RESPONSIBILITY FOR COSTS.

(a) That the provisions of Articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b), or VII(d) of this compact.

ARTICLE IX. DETENTION PRACTICES.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in

any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X. SUPPLEMENTARY AGREEMENTS.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided, in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall

(1) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(2) Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

(3) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) Provide for reasonable inspection of such institutions by the sending state;

(6) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) Make provisions for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI. ACCEPTANCE OF FEDERAL AND OTHER AID.

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize, the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

ARTICLE XII. COMPACT ADMINISTRATORS.

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XIII. EXECUTION OF COMPACT.

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or [of] execution to be in accordance with the laws of the executing state.

ARTICLE XIV. RENUNCIATION.

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The

duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

ARTICLE XV. SEVERABILITY.

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1963, c. 910, s. 1; 1965, c. 925, s. 1.)

§ **110-59. Compact administrator.**—Pursuant to said compact, the Governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effecively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the Governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this State hereunder. (1963, c. 910, s. 2.)

§ **110-60. Supplementary agreements.**—The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. (1963, c. 910, s. 3.)

§ **110-61. Discharging financial obligations imposed by compact or agreement.**—The compact administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the compact or by any supplementary agreement entered into thereunder. (1963, c. 910, s. 4.)

§ **110-62. Enforcement of compact.**—The courts, departments, agencies and officers of this State and subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. (1963, c. 910, s. 5.)

§ **110-63. Additional procedure for returning runaways not precluded.**—In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this State

and the other respective party states for the return of any such runaway juvenile. (1963, c. 910, s. 6.)

§ 110-64. Proceedings for return of runaways under Article IV of compact; "juvenile" construed.—The judge of any court in North Carolina to which an application is made for the return of a runaway under the provisions of Article IV of the Interstate Compact on Juveniles shall hold a hearing thereon to determine whether for the purposes of the compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. The judge of any court in North Carolina finding that a requisition for the return of a juvenile under the provisions of Article IV of the compact is in order shall upon request fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. The period of time for holding a juvenile in custody under the provisions of Article IV of the compact for his own protection and welfare, subject to the order of a court of this State, to enable his return to another state party to the compact pursuant to a requisition for his return from a court of that state, shall not exceed 30 days. In applying the provisions of Article IV of the compact to secure the return of a runaway from North Carolina, the courts of this State shall construe the word "juvenile" as used in this Article to mean any male 16 years of age or under and any female 17 years of age or under. (1965, c. 925, s. 2; 1971, c. 1231, s. 2.)

ARTICLE 5A.

Interstate Parole and Probation Hearing Procedures for Juveniles.

§ 110-64.6. Parole and probation hearing procedures for juveniles. — Where supervision of a parolee or probationer is being administered pursuant to the Interstate Compact on Juveniles, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or a probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this Article within a reasonable time, unless such hearing is waived by the parolee or probationer.

The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 10 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or the reincarceration. (1975, c. 228.)

§ 110-64.7. Hearing officers. — Any hearing pursuant to this Article may be before the Administrator of the Interstate Compact on Juveniles, a deputy of such Administrator, or any other person authorized pursuant to the juvenile laws of this State to hear cases of alleged juvenile parole or probation violations, except that no hearing officer shall be the person making the allegation of violation. (1975, c. 228.)

§ 110-64.8. Due process at parole or probation violation hearing. — With respect to any hearing pursuant to this Article, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that the purpose of the hearing is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.

(2) Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions.

A record of the proceedings shall be made and preserved. (1975, c. 228.)

§ 110-64.9. Effect of parole or probation violation hearing outside the State. — In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact on Juveniles, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this Article, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter (1975, c. 228.)

ARTICLE 8.

Child Abuse and Neglect.

§ 110-115. Short title.—This Article may be cited as the Child Abuse Reporting Law. (1971, c. 710, s. 1.)

§ 110-116. Legislative intent and purpose.—The General Assembly recognizes the growing problem of child abuse and neglect and that children do not always receive appropriate care and protection from their parents or other caretakers acting in loco parentis. The primary purpose of requiring reports of child abuse and neglect as provided by this Article is to identify any children suspected to be neglected or abused and to assure that protective services will be made available to such children and their families as quickly as possible to the end that such children will be protected, that further abuse or neglect will be prevented, and to preserve the family life of the parties involved where possible by enhancing parental capacity for good child care. (1971, c. 110, s. 1.)

§ 110-117. Definitions. — As used in this Article, unless the context otherwise requires:

(1) "Abused child" means a child less than 18 years of age whose parent or other person responsible for his care:

a. Inflicts or allows to be inflicted upon such child a physical injury by other than accidental means which causes or creates a substantial

risk of death or disfigurement or impairment of physical health or loss or impairment of function of any bodily organ, or

b. Creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or disfigurement or impairment of physical health or loss or impairment of the function of any bodily organ, or

c. Commits or allows to be committed any sex act upon a child in violation of law.

(2) "Caretaker" means any person other than a parent who is acting in loco parentis to a child including but not limited to the following: grandparent, uncle or aunt or any blood relative, step-parent; foster parent, house parent or cottage parent or other person supervising a child in a child-caring institution or any State institution, person having custody by court order, and a guardian.

(3) "Director" means a county director of social services.

(4) "Neglected child" means a child less than 18 years of age who comes within the definition of "neglected child" under G.S. 7A-278(4).

(1975, c. 237, ss. 1, 2.)

(5) "Professional person" means a physician, surgeon, dentist, osteopath, optometrist, chiropractor, podiatrist, physician-resident, intern, a registered or practical nurse, hospital administrator, Christian Science practitioner, medical examiner, coroner, social worker, law-enforcement officer, mental health worker, psychologist, public health worker, or a school teacher, principal, school attendance counselor or other professional personnel in a public or private school.

(6) "Protective services" means casework or other counseling services to parents or other caretakers as provided or arranged by a director utilizing the staff of the county department of social services or other community resources which are designed to help such parents or other caretakers to prevent child abuse or neglect, to improve the quality of child care, to be more adequate parents or caretakers, and to preserve and stabilize family life. (1971, c. 710, s. 1; 1974, c. 1086, s. 1.)

§ 110-118. Reports of child abuse or neglect.—(a) Any professional person who has reasonable cause to suspect that any child is an abused or neglected child, or any other person having knowledge that any child is an abused child, shall report the case of such child to the director of social services of the county where the child resides or is found.

(b) The report of child abuse or neglect may be made orally, by telephone or it may be written. The report shall include such information as is known to the person making the report, including the name and address of the child; the name and address of the child's parents or other caretakers; the age of the child; the present whereabouts of the child if not at the home address; the nature and extent of the child's injury or condition resulting from abuse or neglect, and any other information which the person making the report believes might be helpful in establishing the cause of the injuries or the condition resulting from abuse or neglect. If the report of child abuse or neglect is made orally or by telephone, the person making such report shall give his name, address, professional status, if a professional person, and telephone number if such person has a telephone, and the person making such a report shall confirm the information about child abuse or neglect in writing when requested by the director. If the person making the report is a professional person, the report shall also include his professional opinion as to the nature, extent and causes of the injuries or the condition resulting from abuse or neglect.

(c) Anyone who makes a report pursuant to this statute or who testifies in any judicial proceeding resulting from the report shall be immune from any civil or criminal liability that might otherwise be incurred or imposed for complying with the requirements of this statute, unless such person acted in bad faith or with malicious purpose.

(d) Any physician or administrator of a hospital, clinic or other similar medical facility to which an abused child is brought for medical diagnosis or treatment shall have the right to retain temporary physical custody of such child where the physician who examines the child certifies in writing that the child should remain for medical reasons or that in his opinion it may be unsafe for the child to return to his parents or other caretakers. In such case, the physician or administrator shall notify the parents or other caretakers and the director of the county where the child resides of such action. If the parents or other caretakers contest this action, the parents shall request a hearing before the chief district court judge or some district court judge designated by him within the judicial district wherein the child resides or where the hospital or institution is located for review and determination of whether the child shall be returned to his parents or caretaker.

Pending such juvenile hearing, the hospital, clinic or other similar medical facility:

(1) May retain temporary physical custody of the child in which event said hospital, clinic, or medical facility

(2) Shall request the director of social services in the county where the child resides to petition the district court in the district where the child resides to award temporary custody of the child to the director for placement with a relative or in a foster home under the supervision of the county department of social services or

(3) Shall request the director of social services in the county where the hospital or other medical facility is located to petition the district court in the district where the hospital or other medical facility is located to award temporary physical custody of the child to the director for placement with a relative or in a foster home under the supervision of the county department of social services.

Upon receipt of such request in (2) or (3), the director of social services shall file such petition without delay. (1971, c. 710, s. 1; 1975, c. 310.)

§ 110-119. Duty of director of social services.—Any director of social services receiving a report of child abuse or neglect shall make a prompt and thorough investigation in order to ascertain the facts of the case and to evaluate the extent of the abuse or neglect.

After investigation and evaluation, the director of social services shall do one of the following, depending upon his findings of abuse or neglect in the particular case:

(1) If the director finds that the child has not been abused or neglected, he shall notify the person making the report of his findings.

(2) If the investigation reveals abuse or neglect, the director shall decide whether immediate removal of the child or any other children in the home is necessary for the protection of such child or children.

a. If immediate removal of the child or other children does not seem necessary, the director shall immediately provide or arrange for protective services. If the parents or other caretakers refuse to accept the protective services provided or arranged by the director, the director shall sign a juvenile petition to invoke the ju-

venile jurisdiction of the district court for the protection of the child or children.

b. If immediate removal of the child or children seems necessary for the protection of the child or other children in the home, the director shall sign a juvenile petition which alleges the applicable facts to invoke the juvenile jurisdiction of the district court.

(3) If the director finds evidence that a child has been abused, he shall immediately make a report in writing containing his findings along with a copy of the report of child abuse to the district attorney, who shall determine whether criminal prosecution is appropriate and who may request the director to sign the appropriate criminal warrant.

(4) The director shall submit a report of the alleged child abuse or neglect to the central registry under the policies adopted by the Social Services Commission.

In performing any of these duties, the county director may utilize the staff of the county department of social services or any other public or private community agencies that may be available. The director may also consult with the available state or local law-enforcement agencies who shall assist in the investigation and evaluation of the seriousness of any report of child abuse or neglect when requested by the director. (1971, c. 710, s. 1; 1973, c. 476, s. 138; 174, c. 1085, s. 1.)

§ **110-120. Immunity of persons reporting.**—Any person making a complaint or providing information or otherwise participating in the program authorized by this Article shall be immune from any civil or criminal liability by reason of such action, unless such person acted with malice and without reasonable cause. (1971, c. 710, s. 1.)

§ **110-121. Waiver of privileges.**—Neither the physician-patient privilege nor the husband-wife privilege shall be ground for excluding evidence of child abuse or neglect in any judicial proceeding (civil, criminal, or juvenile) in which a child's abuse or neglect is in issue, nor in any judicial proceeding resulting from a report submitted under this Article, both as said privileges relate to the competency of the witness and to the exclusion of confidential communications. (1971, c. 710, s. 1.)

§ **110-122. Central registry.** — The Department of Human Resources shall maintain a central registry of abuse and neglect cases reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same child or of other children in the same family. This data shall be furnished by county directors of social services to the Department of Human Resources and shall be confidential, subject to policies adopted by the Social Services Commission which provide for its appropriate use for study and research, but in no event shall any data be used at any hearing or court proceeding unless based upon a final judgment of a court of law. (1971, c. 710, s. 1; 1973, c. 476, s. 138.)

ARTICLE 1.

Commission of Youth Services in Department of Human Resources.

§ **131A-1. Legislative intent and purpose.** — The General Assembly hereby declares its intent and legislative policy to separate the administration of training schools for committed delinquents from the adult corrections system

to avoid the stigma and punitive philosophy associated with penal facilities for convicted adult offenders. It is further intended that institutional programs for delinquents provide appropriate treatment and care according to the needs of the children in care and that such programs be appropriately coordinated with other services for children within the Department of Human Resources. (1975, c. 742, s. 1.)

§ 131A-2. **Definitions.** — The following terms or phrases shall be defined as follows in this Chapter unless the context or subject matter otherwise requires:

(1) "Child" is any person who has not reached his sixteenth birthday.

(2) "Commission" means the Commission of Youth Services established by this Chapter.

(3) "County detention home" means one of the existing county-supported detention homes for juveniles or one which may be established by a county or other unit of local government in the future.

(4) "Delinquent child" includes any child subject to the juvenile jurisdiction of the district court as defined by G.S. 7A-278(2) who is subject to commitment to an institution for delinquents under G.S. 7A-286.

(5) "Department" means the Department of Human Resources as defined under Chapter 143B, the Executive Organization Act of 1973.

(6) "Director" means the Director of Youth Services established by this Chapter.

(7) "Holdover facility" means a place in a local jail approved by the Department of Human Resources for detention of a child for not more than five calendar days prior to placement in an approved detention home.

(8) "Institution" means a school, training school or institution for committed delinquents heretofore operated by the Division of Youth Development of the Department of Correction, namely the following: Stonewall Jackson School; Samarkand Manor School; Dobb's School for Girls; Richard T. Fountain School; Cameron Morrison School; C. A. Dillon School; Juvenile Evaluation Center.

(9) "Juvenile detention" refers to detention of a child alleged to be undisciplined or delinquent before or after a juvenile hearing as authorized by G.S. 7A-286(3).

(10) "Regional detention home" means a State-supported and administered regional facility providing detention care as recommended by the report.

(11) "Report" means the Report of the National Juvenile Detention Association entitled Juvenile Detention in North Carolina: A Study Report, released in January 1973.

(12) "Secretary" means the Secretary of Human Resources established by G.S. 143B-139.

(13) "Youth services program" means any type of residential or nonresidential program or service for youth that may be developed by the Commission as authorized by this Chapter. (1975, c. 742, s. 1.)

§ 131A-3. **Commission of Youth Services created.** — There is hereby created the Commission of Youth Services within the Department of Human Resources to be responsible for administration of institutions for committed delinquent children and to work with other appropriate units of the Department to develop and utilize community-based services for committed delinquents where appropriate and feasible. (1975, c. 742, s. 1.)

§ 134A-4. Composition and appointment of Commission. — The Commission shall consist of nine members to be appointed as follows: The Governor shall appoint five members; the President of the Senate shall appoint two members; the Speaker of the House shall appoint two members.

The Governor shall appoint three members for two years, two for four years; the President of the Senate shall appoint one member for four years, one for six years; the Speaker of the House shall appoint one member for four years, one for six years. Such appointments shall be made by the Governor, the President of the Senate and the Speaker of the House within 15 days after June 24, 1975. The subsequent appointments shall be for terms to commence on July 1 of the year in which appointed, and each member shall serve until his successor is appointed. Thereafter, all appointments shall be for a term of six years. Any appointment to fill a vacancy shall be made by the original appointing authority for the balance of the unexpired term.

In addition to the nine members to be appointed as outlined above, there shall be two members ex officio who shall not have voting powers. The Director of the Administrative Office of the Courts and the Superintendent of Public Instruction (or their designees) shall serve as ex officio members.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-13.

Members of the Commission shall receive per diem, travel and subsistence allowances in accordance with G.S. 138-5. Members who serve in the General Assembly shall be reimbursed as for other legislative duties. (1975, c. 742, s. 1.)

§ 134A-5. Organization and meetings of Commission. — The Commission shall have a chairman who shall be appointed by the Governor from the members appointed by the Governor and who shall serve as chairman for his term. There shall be a vice-chairman who shall be elected by the Commission from its members and who shall serve for a term of two years or until the expiration of his term.

The Commission shall meet quarterly and may hold special meetings at any time and place within the State on call of the chairman or upon written request of a majority of the members.

A majority of the Commission shall constitute a quorum for a meeting. (1975, c. 742, s. 1.)

§ 134A-6. Transfer of institutions. — All institutions previously operated by the Division of Youth Development of the Department of Correction and the present central office of said Division of Youth Development (including land, buildings, equipment, supplies, personnel, or other properties rented or controlled for youth development purposes) are hereby transferred to the Department of Human Resources which shall administer such institutions and programs as provided by this Chapter. (1975, c. 742, s. 1.)

§ 134A-7. Powers and duties of Commission. — The Commission shall be a policy-making body within the Department with responsibility for approval of policies and procedures as may be proposed by staff which will provide institutional programs to meet the needs of the children in care and to develop other youth services programs as may be needed. The Commission shall have the following powers and duties:

(1) To study the available literature and research findings concerning juvenile delinquency, its causes, and various treatment models so as to be in a position to approve such programs as may be proposed by staff which will provide effective treatment and rehabilitation for children in institutions;

(2) To encourage the development of community-based alternatives to institutions, both residential and nonresidential, by working with other appropriate units of the Department and by approval of plans to purchase services in such programs or by operation of such youth services programs or community-based programs as may be approved;

(3) To make rules, regulations and policies to achieve the following objectives:

a. To develop a sound admission or intake program to institutions, including the requirement of a careful evaluation of the needs of each child prior to acceptance and assignment of any child committed to the Department to any institution or other program of the Department or licensed by the Department which is appropriate to the needs of the child including but not limited to the following: mental institutions or residential program for the retarded; foster home or child care institution; public or private mental health resource or institution;

b. Provide quality educational programs in institutions, including vocational training which is realistic in relation to available jobs;

c. To provide for staff training and development;

d. To provide for periodic evaluation of institutional programs;

e. To secure outside resources to supplement institutional programs, including but not limited to making contracts for services with public schools, community colleges, technical institutes, mental health resources, vocational rehabilitation, Administrative Office of the Courts, community-based services, and others as may be appropriate, including the right to make cooperative agreements with other public or private agencies that involve joint planning, funding and evaluation;

f. To provide for and protect the confidentiality of records of children committed to the Department.

(4) To authorize the transfer of funds appropriated for institutional programs to purchase care or services for committed delinquents in community-based services or other appropriate services as institutional populations decrease;

(5) To close an institution when its operation is no longer justified, provided such action is approved by the Advisory Budget Commission;

(6) To approve personnel policies which result in recruitment, employment and training of personnel who are appropriate to work with children.

(7) To approve management and accounting systems which deliver the appropriate services to children in institutions, including management practices which provide for identification of quantifiable goals at all levels of management in order that each institution or service be operated in an efficient, effective and sound manner;

(8) To adopt such rules and regulations as may be required by the federal government to secure federal funds or grants-in-aid to support youth services programs, provided such rules and regulations conform to State law.

In order to provide for an orderly transition of the institutions from the Department of Correction to the Department, such rules and regulations and procedures as may have been developed by the Department of Correction for the operation of the institutions shall continue in full force and effect until modified or superseded by action of the Commission.

The policies, rules and regulations and other authorized actions of the Commission shall be enforced and implemented by the Department of Human Resources. (1975, c. 742, s. 1.)

§§ 134A-8, 134A-9: Reserved for future codification purposes.

ARTICLE 2.

Director of Youth Services.

§ 134A-10. Appointment. — The Commission shall recommend a person to the Secretary for appointment as Director who shall be qualified by reason of education, training and experience to administer institutional programs and other youth services programs.

The Secretary, with the approval of the Commission, shall appoint the Director who shall be responsible for administration of the institutions and other youth services programs according to the policies and procedures of the Commission under the administrative supervision of the Secretary.

The position of Director shall be full-time, and the Director shall hold no other office, except that the Director shall serve as secretary to the Commission. (1975, c. 742, s. 1.)

§ 134A-11. Term. — The Director shall serve at the pleasure of the Secretary, except that the Director may not be removed from office unless a majority of the members of the Commission shall vote to recommend such action to the Secretary. (1975, c. 742, s. 1.)

§ 134A-12. Powers and duties of Director. — The Director shall have the following powers and duties:

(1) To supervise administration of the institutions according to the policies, rules and regulations of the Commission;

(2) To appoint or remove the head of each institution or youth services program according to personnel policies of the Commission and other laws relative to State personnel;

(3) To appoint such staff for the central office as may be necessary for effective administration of the program;

(4) To provide information about delinquency, research studies, evaluation reports and other appropriate information to inform the Commission about current developments in the field;

(5) To propose policies, programs and rules and regulations to the Commission for its approval as provided by this Chapter. (1975, c. 742, s. 1.)

§ 134A-13. Administrative head of each institution. — The Director shall appoint an administrative head for each institution or youth services program, who shall be responsible for appointment of subordinate personnel in said institution or youth services program in consultation with the Director. The administrative head of each institution or youth services program may discharge any employee for incompetence or other valid reasons according to State personnel policies and with the approval of the Director. (1975, c. 742, s. 1.)

§ 134A-14. Bonds for administrative heads and budget officers. — All administrative heads of institutions or youth services programs and every budget officer shall make a good and sufficient bond payable to the State of North Carolina before beginning their duties in such form and amount as may be specified by the Governor and approved by the State Treasurer. The bonds herein provided for shall be made a part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1947, c. 226; 1969, c. 844, s. 1; 1971, c. 1169; 1975, c. 742, s. 1.)

§§ 134A-15 to 134A-17: Reserved for future codification purposes.

ARTICLE 3.

Commitment and Care.

§ 134A-18. Commitment. — The Department shall accept all children who have been committed for delinquency under G.S. 7A-286, provided the Director or his staff finds that the statutory criteria specified in G.S. 7A-286(5) have been complied with. A court order of commitment accompanied by other appropriate social, medical, psychological or other appropriate information as may be specified by the rules and regulations of the Commission shall be forwarded to the Department which shall determine which institution or youth services program would best provide for the needs of the child so committed and advise the committing court. The Department shall have the authority to assign a child committed for delinquency as herein provided to any institution or other program of the Department or licensed by the Department which is appropriate to the needs of the child under rules and regulations of the Commission. (1947, c. 226; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-19. Responsibility of committing court. — After study of the commitment order and accompanying information concerning the needs of the child, the Department shall notify the committing court which institution or other youth services program is appropriate according to the needs of the child. The committing court shall deliver the child to the place designated by the Department and shall pay all transportation expenses. If the delinquent committed to the Department is a female, she must be accompanied by a female approved by the committing court to the institution or other place designated by the Department. (1975, c. 742, s. 1.)

§ 134A-20. Program. — The Department, under the guidance of the Commission, shall provide such programs in its institutions or other youth services programs as will implement the right of any committed child to appropriate treatment according to his needs including but not limited to the following programs or services: educational; clinical and psychological; psychiatric; social; medical; vocational; recreational; and others as identified as appropriate by the Commission. (1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-21. Authority to provide necessary medical or surgical care. — The Department is authorized to provide such medical and surgical treatment as is necessary to preserve the life and health of students while in care, provided that no surgical operation may be performed except as authorized in G.S. 130-191. (1965, c. 1024; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-22. Compensation to children in care. — Children who have been committed to the Department may be compensated for work or participation in training programs at rates approved by the Commission within available funds and under rules and regulations adopted by the Commission. The Department is authorized to accept grants or funds from any source to compensate children as provided under this section. (1971, c. 933; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-23. Legal effect of commitment. — An adjudication that a child is delinquent as defined by G.S. 7A-278(2) or commitment of a delinquent child to

the Department shall not disqualify the child for public office nor be considered conviction of any criminal offense nor imprisonment for crime nor cause the child to forfeit any citizenship rights. In the case of any youth whose case was transferred from the district court division to the superior court division for trial as an adult as provided by G.S. 7A-280 and who was convicted of a felony and committed to the Department of Correction, all citizenship rights forfeited as a result of such conviction shall be automatically restored to such youth upon the youth's final discharge under rules and regulations of the Department of Correction, and the Secretary of Correction is authorized to issue a certificate to this effect. (1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-24. Runaways. — If a child runs away from the institution or youth services program to which he is assigned, the administrative head of such program shall cause the child to be apprehended and returned. Any employee of the institution or youth services program or of the Department or any peace officer may apprehend and return the child without a warrant or court order. (1947, c. 226; 1971, c. 1169; 1973, c. 476, s. 138; 1975, c. 742, s. 1.)

§ 134A-25. Criminal offense to aid escapes. — It shall be unlawful for any person to aid, harbor, conceal or assist any child to escape from an institution or youth services program. Any person who renders said assistance to a child shall be guilty of a misdemeanor. (1947, c. 226; 1971, c. 1169; 1975, c. 742, s. 1.)

§ 134A-26. Visits and community activities. — The Department shall encourage visits by parents and responsible relatives of children in care under rules and regulations of the Commission. The Department shall also arrange a suitable program of home visits for children in care under rules and regulations of the Commission. (1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-27. Transfer authority of Governor. — The Governor may order transfer of any person less than 18 years of age from any jail or other penal facility of the State to one of the institutions in appropriate circumstances, provided the Governor shall consult with the Department concerning the feasibility of such transfer in terms of available space, staff, and suitability of program. (1947, c. 226; 1971, c. 1169; 1975, c. 742, s. 1.)

§§ 134A-28, 134A-29: Reserved for future codification purposes.

ARTICLE 4.

Prerelease and Release.

§ 134A-30. Authority to release. — The Department shall have the duty to know about the progress of children in its care and to know when a child is ready for release. The Department may release any child at any time after receiving the child in care based on the Department's evaluation of the needs of the child and the best interests of the State under the rules and regulations of the Commission. (1975, c. 742, s. 1.)

§ 134A-31. Prerelease planning. — The Department shall be responsible for regular evaluation of the progress of each child at least once every six months as long as the child remains in the care of the Department. If the Department determines that a child is ready for release, the Department shall initiate a prerelease planning process with the parents and the committing court. This prerelease planning process shall be defined by rules and regulations of the Commission, but the process shall include the following:

(1) Written notice to the committing court and the parents that the child

is ready for release, including an explanation of the reasons and the date of the anticipated release;

(2) A prerelease planning conference involving as many of the appropriate people as possible, including the child, his parents, staff of the committing court (or the staff of the court that will provide aftercare supervision), and staff of the institution or program that found the child ready for release;

(3) Planning for an orderly transition from the institution or youth services program to the child's home or the community to which the child is returning, including arrangements for the court counselor to become involved in supervision as soon as the child leaves the institution. (1975, c. 742, s. 1.)

§ 134A-32. Conditional release and final discharge. — The Department may release a child by conditional release or final discharge. The decision as to which type of release is appropriate shall be made by the Department based on the needs of the child and the best interests of the State under rules and regulations governing release which shall be approved by the Commission, according to the following guidelines:

(1) Conditional release is appropriate for children needing supervision after leaving the institution; in such case, the conditions of conditional release shall be designed by the Department in the prerelease planning process specified in G.S. 134A-31 and provided in writing to the child, his parents and the court staff which will provide aftercare supervision.

(2) Final discharge is appropriate when the child does not seem to require supervision or is 18 years of age. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-33. Revocation of conditional release. — If a child who was released on conditional release does not conform to the conditions of said conditional release, the court counselor providing aftercare supervision or the appropriate staff of the Department may make a motion for review in the district court in the district where the child has been residing during such aftercare supervision. The district court shall hold a juvenile hearing to determine whether there has been such a violation. If the court determines that the child has violated the terms of his conditional release, the court may revoke such conditional release or make any other disposition authorized by G.S. 7A-286 which the court determines to be in the best interest of the child. If the court revokes the conditional release, the court staff shall make arrangements with the Department for the return of the child under rules and regulations approved by the Commission. (1947, c. 226; 1963, c. 914, s. 4; 1971, c. 1169; 1973, c. 1262, s. 10; 1975, c. 742, s. 1.)

§§ 134A-34, 134A-35: Reserved for future codification purposes.

ARTICLE 5.

Detention Services.

§ 134A-36. Legislative intent. — The General Assembly intends to provide an administrative structure for implementation of the study of detention needs in North Carolina done by the National Juvenile Detention Association entitled Juvenile Detention in North Carolina: A Study Report, released in January, 1973. In addition to the authority of the Department under Part 3, Article 3, Chapter 108 and Article 10, Chapter 153A, the Department shall be responsible for the development and administration of regional detention homes as recommended

in the report and for coordination of regional detention services through existing county detention homes. (1973, c. 1230, s. 1; c. 1262, s. 10; 1975, c. 742, s. 1.)

§ 134A-37. Regional detention services. — The Department shall be responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services as recommended by said report which will offer juvenile detention care of sufficient quality to meet State standards to any child requiring juvenile detention care within the State in a county detention home or a regional detention home by January 1, 1979, as follows:

(1) The Department shall plan with the counties operating a county detention home to provide regional juvenile detention services to surrounding counties as recommended by said report, except that the Department shall have some discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate variable factors.

(2) The Department shall plan for and administer five or more regional detention homes as recommended in said report, including careful planning on location, architectural design, construction, and administration of a program to meet the needs of children in juvenile detention care. Both the physical facility and the program of a regional detention home shall comply with State standards. (1973, c. 1230, s. 1; 1975, c. 742, s. 1.)

§ 134A-38. State subsidy to county detention homes. — The Department shall develop a State subsidy program to pay a county detention home which provides regional juvenile detention services and meets State standards a certain portion of its operating costs and its per capita daily cost per child for any child cared for from another county as recommended in said report. In general, this subsidy should be fifty percent (50%) of the operating costs of a county detention home and one hundred percent (100%) of the per capita daily cost of caring for a child from another county; any county placing a child in the county detention home of another county providing regional juvenile detention services or a regional detention home should pay fifty percent (50%) of the per capita daily cost of caring for the child to the Department. The exact funding formulas may be varied by the Department to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care. (1973, c. 1230, s. 1; 1975, c. 742, s. 1.)

§ 134A-39. Authority for implementation. — In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Department shall have legal authority to do the following:

(1) To develop rules and regulations which may be necessary to fulfill its responsibilities under this Article, which shall be effective when approved by the Commission;

(2) To plan with counties operating county detention homes to provide regional services and to upgrade physical facilities as recommended in said report, to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards;

(3) To develop one or more pilot programs to demonstrate quality juvenile detention care on a regional basis that meet State standards;

(4) To develop a plan whereby law-enforcement officers or other appropriate employees of local government shall be reimbursed by the State for the costs of transportation of a child to and from any juvenile detention facility;

(5) To seek funding for juvenile detention services from federal sources, and to accept gifts of funds from public or private sources; and

(6) To transfer State funds appropriated for institutions or other youth services programs to develop a pilot program of juvenile detention care, to purchase detention care in a county detention home which meets State standards, and to operate a regional detention home. (1973, c. 1230, s. 1; 1975, c. 742, s. 1.)

Part 21. Technical Advisory Committee on Delinquency Prevention and Youth Services.

§ 143B-207. Committee created; duties. — There is hereby created the Technical Advisory Committee on Delinquency Prevention and Youth Services to advise and assist the Secretary of Human Resources in the development of delinquency prevention programs and community-based services for youth, both residential and nonresidential, which shall have the following duties:

(1) To provide yearly program evaluation of the effectiveness of delinquency prevention programs and community-based services developed or supported under provisions of this Article, and, based on the findings of that evaluation, to make recommendations to the Secretary of the Department of Human Resources on the yearly budget requests for continuation funding;

(2) To advise and assist the Secretary of Human Resources in the development of a program which would coordinate the resources of State government within the appropriate departments to provide technical assistance to local areas within the State to assist them in planning delinquency prevention programs and community-based services for youth, including but not limited to the following: study local youth needs; gather data on children within the juvenile jurisdiction of the district court; evaluate resources for providing services or care to these children; provide information about various program models which might be appropriate in relation to the needs of youth; help in planning for evaluation; and other assistance as may be appropriate;

(3) To develop and recommend to the Secretary of Human Resources the program evaluation standards for delinquency prevention programs and community-based programs, both residential and nonresidential;

(4) To advise and assist the Secretary of Human Resources in encouraging the development of delinquency prevention programs and community-based services by private groups so that such programs can be responsive to local needs, so that local leadership and private groups can be responsible for their programs, and so that programs which meet State standards can be assisted by State and federal funding and so that available private funds can be appropriately utilized along with available State and federal funds;

(5) To advise and assist the Secretary of Human Resources in development of programs which have a plan for evaluation from the beginning so that successful program models can be replicated as appropriate;

(6) To advise and assist the Secretary of Human Resources in the development of delinquency prevention programs and community-based services under public auspices where there is no local private leadership. (1975, c. 929.)

§ 143B-208. Composition of Committee; terms; vacancies; expenses, etc. — The Committee shall consist of 14 members who shall be appointed as follows:

(1) Two members shall be appointed by the Governor who shall be citizens who are parents and have some knowledge about juvenile delinquency, its prevention, and community-based services;

(2) Four members shall be appointed by the General Assembly, two by the Speaker of the House of Representatives and two by the President of the Senate, who shall be members of the General Assembly with an interest in youth problems;

(3) Two members shall be appointed by the Secretary of Human Resources who shall be personnel employed by the Department of Human Resources with knowledge about delinquency prevention programs, community-based services, child care, and licensing;

(4) Two members shall be appointed by the Director of the Administrative Office of the Courts, including at least one chief court counselor from the local level;

(5) Two members shall be appointed by the Superintendent of Public Instruction, one of whom shall be a person from a local public school administrative unit with knowledge about school attendance problems, learning problems of children, alternative school programs, and other school programs to provide individualized instruction;

(6) Two members shall be appointed by the chairman of the Governor's Committee on Law and Order who shall be members of said Committee who are knowledgeable about juvenile delinquency and federal funds available for juvenile services.

All appointments shall be for a term of two years, to begin on or before July 1, 1975. Any vacancy arising for any cause other than the expiration of the term shall be filled by the original appointing authority for the unexpired term. The Committee should include representation of racial minorities and women. The Committee shall elect its chairman and other officers as may be needed from among the membership of the Committee. Members of the Technical Advisory Committee may receive travel and per diem expenses as authorized for members of State committees under G.S. 138-5. (1975, c. 929.)

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 2. Local Confinement Facilities.

§ 153A-221.1. Standards and inspections. — The legal responsibility of the Secretary of Human Resources and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. Further, the legal responsibility of the Department of Human Resources is hereby expanded to give said Department the same legal responsibility as to the state-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 134-37.

The Secretary of Human Resources shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by G.S. 134-36 in line with the recommendations of the report entitled *Juvenile Detention in North Carolina: A Study Report* (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.

The Secretary of Human Resources shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child. (1973, c. 1230, s. 2; c. 1262, s. 10; 1975, c. 426, s. 2.)

SUBCHAPTER V. OFFENSES AGAINST PROPERTY.

ARTICLE 16.

Larceny.

§ 14-72.1. Concealment of merchandise in mercantile establishments.—(a) Whoever, without authority, willfully conceals the goods or merchandise of any store, not theretofore purchased by such person, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one hundred dollars ($100.00), or by imprisonment for not more than six months, or by both such fine and imprisonment. Such goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by such person shall be prima facie evidence of a willful concealment.

(b) Any person who has been found guilty of an offense under either subsection (a) or subsection (d) of this section and who is later found guilty of an offense under either subsection (a) or subsection (d) of this section shall be guilty of a general misdemeanor and shall be punished in the discretion of the court.

(c) A merchant, or his agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is in a reasonable manner for a reasonable length of time, if in detaining or in causing the arrest of such person, the merchant, or his agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or his agent or employee, is a minor 16 years of age or younger, the merchant or his agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. (1957, c. 301; 1971, c. 238.)

(d) Whoever, without authority, wilfully transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price or marks said goods at a lower price or substitutes or superimposes thereon a false price tag and then presents said goods or merchandise for purchase shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one hundred dollars ($100.00) or by imprisonment for not more than six months or by both fine and imprisonment.

Nothing herein shall be construed to provide that the mere possession of goods or the production by shoppers of improperly priced merchandise for check-out shall constitute prima facie evidence of guilt. (1957, c. 301; 1971, c. 238; 1973, c. 457, ss. 1, 2.)

ARTICLE 39

Protection of Minors

§ **14-313. Selling cigarettes to minors.**—If any person shall sell, give away or otherwise dispose of, directly or indirectly, cigarettes, or tobacco in the form of cigarettes, or cut tobacco in any form or shape which may be used or intended to be used as a substitute for cigarettes, to any minor under the age of seventeen years, or if any person shall aid, assist or abet any other person in selling such articles to such minor, he shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both. (1891, c. 276; Rev., s. 3804; C. S., s. 4438; 1969, c. 1224, s. 3.)

§ **14-314**: Repealed by Session Laws 1971, c. 31.

§ **14-315. Selling or giving weapons to minors.**—If any person shall knowingly sell, offer for sale, give or in any way dispose of to a minor any pistol or pistol cartridge, brass knucks, bowie knife, dirk, loaded cane or slingshot, he shall be guilty of a misdemeanor. (1893, c. 514; Rev., s. 3852; C. S., s. 4440.)

§ 14-316. Permitting young children to use dangerous firearms.

(a) It shall be unlawful for any parent, guardian, or person standing in loco parentis, to knowingly permit his child under the age of twelve years to have the possession, custody, or use in any manner whatever, any gun, pistol or other dangerous firearm, whether such weapon be loaded or unloaded, except when such child is under the supervision of the parent, guardian or person standing in loco parentis. It shall be unlawful for any other person to knowingly furnish such child any weapon enumerated herein. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty days.

(b) Air rifles, air pistols, and BB guns shall not be deemed "dangerous firearms" within the meaning of subsection (a) of this section except in the following counties: Anson, Caldwell, Caswell, Chowan, Cleveland, Cumberland, Durham, Forsyth, Gaston, Harnett, Haywood, Mecklenburg, Stanly, Stokes, Surry, Union, Vance. (1913, c. 32; C. S., s. 4441; 1965, c. 813; 1971, c. 309.)

§ 14-316.1. Contributing to delinquency and neglect by parents and others. — (a) Any parent, guardian, or other person acting in loco parentis to a child under 16 years of age who fails to exercise reasonable diligence in the care, protection, or control of such child, or who knowingly or willfully permits such child to associate with immoral persons, or to beg, or to solicit funds, or to be unlawfully absent from school, or to engage in sexual intercourse, or to enter any place which may be injurious to the morals, health, or general welfare of such child shall be guilty of a misdemeanor.

(b) Any person who knowingly or willfully causes, encourages, or aids any child under 16 years of age to be in a place or condition, or to commit an act whereby such child could be adjudicated delinquent, undisciplined or neglected as defined by G.S. 7A-278 or who engages in sexual intercourse with such child shall be guilty of a misdemeanor.

(c) It shall not be necessary for a district court exercising juvenile jurisdiction to make an adjudication that any child is delinquent, undisciplined or neglected in order to prosecute a parent or any other person under this section. An adjudication that a child is delinquent, undisciplined or neglected shall not preclude a subsequent prosecution of a parent or any other person who contributes to the delinquent, undisciplined or neglected condition of any child. (1919, c. 97, s. 19; C. S., s. 5057; 1959, c. 1284; 1969, c. 911, s. 4; 1971, c. 1180, s. 5.)

§ **14-317. Permitting minors to enter barrooms or billiard rooms.**—If the manager or owner of any barroom, wherein beer, wine, or any alcoholic

beverages are sold or consumed, or billiard room shall knowingly allow any minor under 18 years of age to enter or remain in such barroom or billiard room, where before such minor under 18 years of age enters or remains in such barroom or billiard room, the manager or owner thereof has been notified in writing by the parents or guardian of such minor under 18 years of age not to allow him to enter or remain in such barroom or billiard room, he shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. (1897, c. 278; Rev., s. 3729; C. S., s. 4442; 1967, c. 1089.)

§ **14-318. Exposing children to fire.** — If any person shall leave any child of the age of seven years or less locked or otherwise confined in any dwelling, building or enclosure, and go away from such dwelling, building or enclosure without leaving some person of the age of discretion in charge of the same, so as to expose the child to danger by fire, the person so offending shall be guilty of a misdemeanor, and shall be punished at the discretion of the court. (1893, c. 12; Rev., s. 3795; C. S., s. 4443.)

14-318.1. Discarding or abandoning iceboxes, etc.; precautions required.—It shall be unlawful for any person, firm or corporation to discard, abandon, leave or allow to remain in any place any icebox, refrigerator or other container, device or equipment of any kind with an interior storage area of more than one and one-half (1½) cubic feet of clear space which is airtight, without first removing the door or doors or hinges from such icebox, refrigerator, container, device or equipment. This section shall not apply to any icebox, refrigerator, container, device or equipment which is being used for the purpose for which it was originally designed, or is being used for display purposes by any retail or wholesale merchant, or is crated, strapped or locked to such an extent that it is impossible for a child to obtain access to any airtight compartment thereof. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished at the discretion of the court. (1955, c. 305.)

§ 14-318.2. Child abuse a general misdemeanor. — (a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the misdemeanor of child abuse.

(b) The misdemeanor of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies, and is punishable as provided in G.S. 14-3(a). (1965, c. 472, s. 1; 1971, c. 710, s. 6.)

§ 14-318.3: Repealed by Session Laws 1971, c. 710, s. 7, effective July 1, 1971.

§ 14-319: Repealed by Session Laws 1975, c. 402.

§ 14-320. Separating child under six months old from mother. — It shall be unlawful for any person to separate or aid in separating any child under six months old from its mother for the purpose of placing such child in a foster home or institution, or with the intent to remove it from the State for such purpose, without the written consent of either the county director of social services of the county in which the mother resides, or of the county in which the child was born, or of a private child-placing agency duly licensed by the Social Services Commission; but the written consent of any of the officials named in this section

shall not be necessary for a child when the mother places the child with relatives or in a boarding home or institution inspected by the Department of Human Resources and licensed by the Social Services Commission. Such consent when required shall be filed in the records of the official or agency giving consent. Any person or agency violating the provisions of this section shall, upon conviction, be fined not exceeding five hundred dollars ($500.00) or imprisoned for not more than one year, or both, in the discretion of the court. (1917, c. 59; 1919, c. 240; C. S., s. 4445; 1939, c. 56; 1945, c. 669; 1949, c. 491; 1965, c. 356; 1969, c. 982; 1973, c. 476, s. 138.)

§ **14-320.1. Transporting child outside the State with intent to violate custody order.** When any court of competent jurisdiction in this State shall have awarded custody of a child under the age of sixteen years, it shall be a felony for any person with the intent to violate the court order to take or transport, or cause to be taken or transported, any such child from any point within this State to any point outside the limits of this State or to keep any such child outside the limits of this State. Such crime shall be punishable by a fine in the discretion of the court or by imprisonment in the State's prison, or not more than three years, in the discretion of the court, or by both such fine and imprisonment. Provided that keeping a child outside the limits of the State in violation of a court order for a period in excess of seventy-two hours shall be prima facie evidence that the person charged intended to violate the order at the time of taking. (1969, c. 81.)

§ **14-321. Failing to pay minors for doing certain work.**—Whenever any person, having a contract with any corporation, company or person for the manufacture or change of any raw material by the piece or pound, shall employ any minor to assist in the work upon the faith of and by color of such contract, with intent to cheat and defraud such minor, and, having secured the contract price, shall willfully fail to pay the minor when he shall have performed his part of the contract work, whether done by the day or by the job, the person so offending shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1893, c. 309; Rev., s. 3428a; C. S., s. 4446.)

Appendix II

DIVERSION OF JUVENILE OFFENDERS: AN OVERVIEW

Summary of Recommendations

Objectives of Diversionary Programs

1. It is recommended that pre-adjudicative diversionary programs be established in every community and/or governmental jurisdiction under the auspices of the community juvenile justice system to reroute juvenile offenders, particularly those who are charged with misdemeanors, "status" offenses and first offenses, from the formal machinery of the juvenile justice system, insofar as is warranted by the nature of the individual case.
2. It is recommended that pre-adjudicative diversionary programs, while primarily focusing on the objective of preventing recidivism on the part of known juvenile offenders, also, when feasible, provide services to non-offender children with the objective of delinquency prevention.
3. It is recommended that pre-adjudicative diversionary programs be composed of the following essential elements: (1) Specific referral procedures; (2) Voluntary participation by clients; (3) Adequate provision for feedback and evaluation of clients by referring agencies; (4) Adequate in-house service component; (5) Provision for community-based treatment when feasible; and (6) Legal framework.

Criteria for Diversion

1. It is recommended that a child brought to the attention of police and court intake divisions should be *considered* for diversion from formal court adjudication procedures if the child has been referred on any of the following charges which violate existing state and/or municipal statutes: (a) Status offenses (which would not be crimes if committed by adults); (b) Vagrancy or runaway; (c) Truancy; and (d) Incorrigibility.
2. It is recommended that juvenile court laws in all 50 states, where applicable, be rewritten to eliminate jurisdiction over truants, "beyond control" children and "persons in need of supervision" and assign such jurisdiction for the welfare of these children to public social welfare agencies.

Adapted with permission from the International Association of Chiefs of Police, Inc., from R. Kobetz & B. Borsarge, **Juvenile Justice Administration** (1973).

The Concept of Individualized Justice

It is recommended that a juvenile misdemeanant or first offender apprehended in a group be treated as an individual and not as a member of a group; any discretionary decision to divert this juvenile from the formal adjudicatory process should be based upon his ability to meet the criteria established by police and court intake officers for diversion of misdemeanants and first offenders into a community-based rehabilitation program.

THE POLICE ROLE IN JUVENILE JUSTICE

Summary of Recommendations

Discretionary Judgment

1. It is recommended that the legislatures in all 50 states statutorily delegate administrative rule-making on the use of discretionary judgment to law enforcement agencies.
2. It is recommended that Federal and State courts support and encourage law enforcement agencies in the development, implementation and review of administrative policies on the use of discretionary judgment.
3. It is recommended that police administrators officially recognize the existence of discretionary decision making policies in their departments and that they establish administrative procedures to govern the use of such discretion.
4. It is recommended that all law enforcement agencies revise rules and regulations manuals to include policy guidelines on the use of discretionary judgment and include examples of situations where discretionary judgment to arrest may be utilized by police officers.
5. It is recommended that all law enforcement agencies conduct training programs both at the recruit and in-service levels to affirm the department's position on the use of discretionary judgment and to acquaint officers with situations in which discretion may be exercised.
6. It is recommended that all law enforcement agencies establish internal procedures to review the exercise of discretionary decision making and to take appropriate disciplinary action when discretion is misused or subverted to a wrong purpose.

3. It is recommended that state and/or municipal juvenile statutes be rewritten to include specific criteria for the diversion from adjudication of certain classes of misdemeanants and first offenders; these revised statutes should clearly state that any exercise of discretion by police and court intake officers to divert a juvenile from formal adjudicatory procedures must result in the placement of the juvenile in a formally structured rehabilitative program.
4. It is recommended that serious *consideration* be given to the diversion from the formal adjudicatory process of *carefully selected* juvenile misdemeanants and first offenders; this decision to divert *must not be based upon the nature of the offense alone*, but must also consider the factors of: (a) The seriousness of the crime; (b) The degree of bodily harm inflicted by the offender on self or others; (c) The degree of criminal sophistication utilized in the commission of the crime; and (d) The desire of the victim/complainant to prosecute.
5. It is recommended that police and court agencies, in cooperation with municipal governments, establish "restitution" programs in which diverted juvenile offenders perform work for the municipality for a specified period of time as part of the juvenile's rehabilitative program; in conjunction with this work experience, the juvenile should also participate in individual and/or group counseling sessions with a probation officer.
6. It is recommended that the Federal Government and the state legislatures establish uniform statutes governing the growing, possession, use and sale of marihuana, incorporating statutory provisions for uniform national and/or state penalties based upon the degree of the offense.
7. It is recommended that police and court intake officers refer all alleged juvenile narcotics and dangerous drug *traffickers* to the juvenile court for formal adjudication and that juvenile court judges assess severe penalties upon such offenders if the evidence warrants a conviction.
8. It is recommended that police and court intake officers *consider* the diversion of juvenile first offender narcotics and dangerous drug *users* into community-based rehabilitation programs for appropriate medical and psychological treatment; if addiction is indicated, the juvenile first offender should be referred to court for placement in a custodial medical facility.
9. It is recommended that juvenile second offender narcotics and dangerous drug users and addicts be referred to juvenile court for adjudication and placement in a custodial medical facility for treatment; juvenile drug users should not be placed in correctional institutions where no medical and psychological treatment is available.

Police-Juvenile Procedures (The Need for Guidelines)

1. It is recommended that *all* police departments, with the assistance of departmental legal counsel, develop guidelines and policies governing the disposition of juvenile cases at the police level and that these guidelines and policy statements be published and distributed to *all* officers; it is further recommended that training programs be initiated at the recruit and in-service level to familiarize *all* officers with police dispositional procedures in juvenile cases.
2. It is recommended that all police departments in medium to larger cities establish specialized juvenile units; in smaller cities, it is recommended that at least one officer be assigned specifically to the police-juvenile function in addition to his regular patrol duties.
3. It is recommended that police administrators with existing juvenile units improve the "status" of such units, where applicable, to ensure that all members of the department recognize that the juvenile unit is a necessary and valuable component of the police organization.
4. It is recommended that police administrators assign one or more trained juvenile specialists to each tour of duty to immediately process juvenile offenders; in smaller departments where there are fewer juvenile specialists, it is recommended that the police chief determine the time periods in which the greatest amount of contacts occur with juveniles and so assign the officer to be available during these periods; in addition, it is recommened that all police departments establish written policies governing the referral of juvenile offenders to police-juvenile officers.
5. It is recommended that juvenile officers should, if possible, be selected from among the department's experienced line officers and that they should be assigned by the chief of police, rather than appointed by a Civil Service or merit commission, on the basis of a departmental written and oral examination.
6. It is recommended that selection boards established to interview candidates for the position of police-juvenile officer include police department command officers and selected individuals from the juvenile justice system and public youth serving agencies.
7. It is recommended that police administrators allow qualified officers, who so desire, to pursue careers as police-juvenile specialists, with the same opportunities for promotion and advancement available to other officers in the department.
8. It is recommended that officers selected for assignment to police-juvenile units be given specialized training in police-juvenile procedures prior to beginning their assignment.
9. It is recommended that state law enforcement training commissions establish statewide standards for the pre-service specialized training of police-juvenile officers; it is further recommended that

the directors of state law enforcement training commissions establish national standards for the pre-service specialized training of police-juvenile officers.

10. It is recommended that police-juvenile officers participate in periodic in-service training programs, either within the department or by attending regional, state and/or national training schools and workshops.
11. It is recommended that community or regional juvenile justice systems periodically sponsor and conduct interdisciplinary in-service training programs for system personnel.
12. It is recommended that, where feasible, cities exchange police-juvenile officers for brief periods of time to enable such officers to observe police-juvenile procedures in other jurisdictions.
13. It is recommended that community juvenile justice systems exchange personnel on an interdisciplinary basis for brief periods of time to enable such personnel to familiarize themselves with the operational procedures of each system component.
14. It is recommended that *all* police officers receive extensive recruit training and subsequent in-service training in police-juvenile procedures.

Police-Sponsored Delinquency Prevention Programs

1. It is recommended that police departments and the juvenile court adopt mutually agreeable written policies pertaining to the disposition of juvenile cases at the police level; such policies should clarify the use of "discretionary judgment" in police disposition of juvenile cases; furthermore, such policies should be approved by the chief of police before adoption by the juvenile unit.
2. It is recommended that police-juvenile units establish policies which prohibit police sponsorship of "unofficial probation" programs; it is further recommended that police-juvenile officers refrain from serving as "guidance counselors" to delinquent youth.
3. It is recommended that police-juvenile units establish policies which would prohibit police officers from participating in recreational and athletic programs for youth while on duty; officers with an interest in such programs should, however, be encouraged to participate in them on their off-duty time.
4. It is recommended that the Federal Government, through the Interdepartmental Council to Coordinate All Federal Juvenile Delinquency Programs, encourage and support the development of pre-court diversionary/community relations programs for juveniles at the police department level and that Federal funds be provided through the Law Enforcement Assistance Administration, U.S. Department of Justice, for the establishment, operation and evaluation of such programs.

THE CHILD AND THE COURT SYSTEM

Summary of Recommendations

The Juvenile Court as an Institution

1. It is recommended that the Federal Government, through the state criminal justice planning agencies, provide technical assistance to state legislatures and juvenile court judges' councils in the drafting of model legislation to improve the administration of the juvenile court system; and that the U.S. Department of Justice provide sufficient funds to the states to encourage the drafting and implementation of this model legislation.
2. It is recommended that the U.S. Department of Health, Education, and Welfare revise its juvenile court statistical reporting procedures to separate the number of "status" offenders from true delinquents; this revision is necessary in order to provide juvenile court judges and legislators with factual information for the drafting of legislation designed to remove "status" offenses from the court's jurisdiction.
3. It is recommended that all states draft and approve legislation removing the so-called "status" offenses from the jurisdiction of the juvenile courts; and requiring that the treatment and rehabilitation of children who are behavioral problems be assigned to those agencies which are most capable of dealing with the particular problem.
4. It is recommended that all municipal/county governments immediately establish community-based service and treatment facilities for all "status" offenders and that these "status" offenders be diverted from the formal sanctioning procedures of the juvenile justice system.

Organization of the Juvenile Court

1. It is recommended that, in those jurisdictions where judicial procedural and rulemaking responsibilities are diversified among several judges, these responsibilities be vested in one administrative judge who is chiefly responsible for the operation of the juvenile court; further, it is recommended that this judge meet weekly with his staff directors to review rules and procedures.
2. It is recommended that the juvenile court judge periodically meet with the directors of other components of the community juvenile justice system to review court rules and procedures which may be in conflict with the smooth functioning of the system as a whole

and that mutually agreeable written procedural guidelines be developed.

3. It is recommended that all juvenile courts which have not undergone major reorganizations in recent years seek funds from state criminal justice planning agencies to contract for outside management studies of the court and that the SPA's set aside sufficient funds for these studies to be performed by all juvenile courts which request them.
4. It is recommended that all juvenile courts with more than 25 personnel employ a professional court administrator to manage the planning, administrative and personnel aspects of the court's operations and that juvenile court judges be released from primary managerial responsibilities.
5. It is recommended that all juvenile courts conduct at least one 40-hour in-service training session per year for professional court employees who are responsible for the delivery of services to youths; and that these training sessions be supplemented with periodic one-day refresher courses.
6. It is recommended that the juvenile court conduct in-service training programs in conjunction with other components of the community juvenile justice system; at least one interdisciplinary training program should be conducted annually.
7. It is recommended that the juvenile court conduct a management study to determine if its data system is functioning smoothly at all levels of caseflow and whether the data system is structured to enable its use in the formulation of daily management decisions.
8. It is recommended that those juvenile courts with faulty and uncoordinated data systems initiate a records and filing control program to simplify and modernize their filing systems.
9. It is recommended that municipal/county juvenile courts consider the establishment of computerized central records systems and that these systems be utilized to coordinate the exchange of case information between the court, the police and the social welfare system.

The Court Intake Function

1. It is recommended that state legislatures establish legal nondiscriminatory written guidelines to govern pre-judicial intake proceedings and that these guidelines set forth in detail those criteria to be followed by the intake officer in making the decision to petition the case or settle it informally.
2. It is recommended that juvenile courts consider adopting a rule limiting informal adjustment of cases to a 30-day period following the filing of a complaint.

3. It is recommended that court intake units refrain from the practice of placing juvenile offenders on "informal" probation, as such a practice may infringe upon the constitutional rights of the child.

Legal Services

1. It is recommended that juvenile courts secure from the office of the district attorney prosecutors to work exclusively in juvenile justice on a full-time basis and that the court provide pre-service and in-service training programs for these prosecutors in juvenile procedures.
2. It is recommended that juvenile court prosecutors take an active role in reforming and improving the administration of juvenile justice; and that prosecutors encourage practitioners in other juvenile justice disciplines to participate in regional and statewide interdisciplinary juvenile justice conferences and training programs.
3. It is recommended that the juvenile courts, in cooperation with the district attorney's office, immediately design and implement standards and guidelines defining the role, duties and responsibilities of the prosecutor in the juvenile court function.
4. It is recommended that the juvenile court prosecutor develop and conduct in-service training programs for law enforcement officers to familiarize them with juvenile laws and procedures.
5. It is recommended that the juvenile court judge establish in-service training programs for defense attorneys, both public defenders and private counsel, to acquaint them with court rules, procedures and guidelines and to obtain feedback from them on court procedures which need to be improved.

The Judiciary

1. It is recommended that each state establish written standards governing the selection, education and training of juvenile court judges and that these standards require both pre-service and in-service training for those serving on the juvenile court bench.
2. It is recommended that those states which rely on election as the primary method of selecting juvenile court judges discontinue this practice and adopt either an appointive system or a combination appointive-elective system (the Merit Plan) in order to ensure that juvenile court judicial candidates possess the minimum qualifications for this position.

Appendix III

File No. _____

STATE OF NORTH CAROLINA
County of

In the General Court of Justice
District Court Division

In the Matter of

_____
_____
_____
Name, Age, and Address of Child

JUVENILE PETITION

_____, Petitioner, having sufficient knowledge or information to believe that a case has arisen which invokes the juvenile jurisdiction of the court, alleges:

1.

That the above-named child is less than _____ years of age and resides in the district at the address shown above, or was found in the district as alleged herein.

2.

That the names and addresses of the child's parents or guardian or custodian are as follows:

Name	*Relation or Title*	*Address*
_____	_____	_____
_____	_____	_____
_____	_____	_____

3.

_____
_____
_____
_____

Petitioner prays the court to hear the case to determine whether the allegations are true and whether the child is in need of the care, protection, or discipline of the State.

This _____ day of _____, 19____.

_____
Petitioner

_____
Address

(Over)

122

VERIFICATION

The undersigned Petitioner, being duly sworn, says that the Petition on the reverse hereof is true to his own knowledge, except as to those matters alleged on information and belief, and as to those matters, he believes it to be true.

Sworn to and subscribed before me on
the date shown on the Petition.

_____
Petitioner – Affiant

_____
Deputy Clerk of Superior Court

Appendix IV

ADDITIONAL READINGS ON THE JUVENILE JUSTICE SYSTEM WITH REFERENCE TO NORTH CAROLINA

As the Twig Is Bent: A Report of the North Carolina Juvenile Justice Corrections System, Raleigh: North Carolina Bar Association, 1972.

Hogue, L. Lynn. "English Behind Bars: Some Reflections on Freshman Composition at the Polk Center for Youthfull Offenders, *"North Carolina English Teacher* 29 (Fall 1971), 19-25. (Discusses the first on-site, college-level instruction in the North Carolina penal system.)

Report of the Governor's Advisory Committee on Youth Development, Raleigh, 1973. Thomas, Mason P., Jr. "Child Abuse and Neglect,

Thomas, Mason P., Jr. "Child Abuse and Neglect, Part I: Historical Overview, Legal Matrix, and Social Perspectives," *North Carolina Law Review* 50 (19720, 273-349.

____. *The Child Abuse Reporting Law of 1971: Protecting Children Becomes a Broader Community Responsibility*. Chapel Hill: Institute of Government, 1971.

____, ed. *Delinquency Prevention: The School's Role*. Chapel Hill: Institute of Government, 1970.

____. *Juvenile Corrections: Brief History; and Juvenile Jurisdiction: North Carolina's Laws and Related Cases*. Chapel Hill: Institute of Government, 1972.

THE INSTITUTE OF GOVERNMENT, an integral part of the University of North Carolina at Chapel Hill, is devoted to research, teaching, and consultation in state and local government.

Since 1931 the Institute has conducted schools and short courses for city, county, and state officials. Through guidebooks, special bulletins, and a magazine, the research findings of the Institute are made available to other officials throughout the state.

The Legislative Service of the Institute records daily the activities of the General Assembly, while it is in session, both for members of the legislature and for other state and local officials who need to follow the course of legislative events.

Over the years the Institute has served as the research agency for numerous study commissions of the state and local governments.